Message

From: Tom Pyle [info@americanenergyalliance.org]
Sent: 12/7/2018 3:10:31 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Bonanza!

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In the Pipeline

MORNING ENERGY NEWS | 12.7.2018

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Admit it. Ten years ago you thought we were dead and buried.

Bloomberg (12/6/18) reports: "America turned into a net oil exporter last week, breaking 75 years of continued dependence on foreign oil and marking a pivotal—even if likely brief—moment toward what U.S. President Donald Trump has branded as 'energy independence.' The shift to net exports is the dramatic result of an unprecedented boom in American oil production, with thousands of wells pumping from the Permian region of Texas and New Mexico to the Bakken in North Dakota to the Marcellus in Pennsylvania. U.S. crude shipments reached a record 3.2 million barrels last week, government data show. The shale revolution has transformed oil wildcatters into billionaires and the U.S. into the world's largest petroleum producer, surpassing Russia and Saudi Arabia. The power of OPEC has been diminished, undercutting one of the major geopolitical forces of the last half century."

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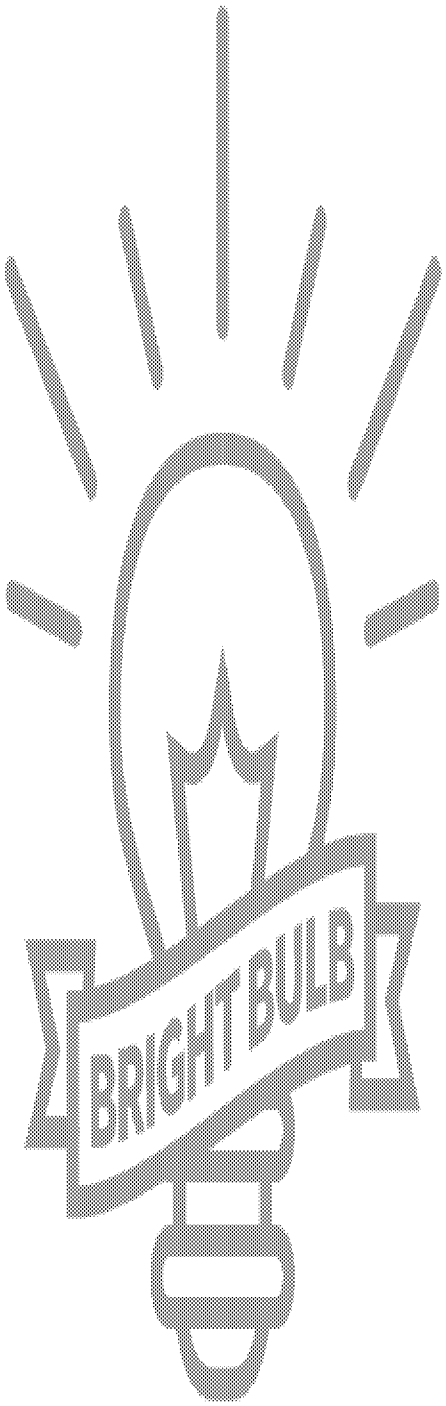


"No, we're not happy people rioted. But governments must learn they can't just jam things down people's throats, and expect them to like it. No one asked Macron to raise energy taxes. Macron and his government did it because, to them, globalism is more important than satisfying the demands of their own citizens."

– Investor's Business Daily Editorial Board

It's so beautiful...

New York Times (12/4/18) reports: "As thousands of environmental experts from around the world arrived for a conference on climate change, hoping to find a way to stem the damage caused by burning fossil fuels, their Polish hosts arranged for a band to greet them. The Polish Coal Miners Band, dressed in smart black uniforms and wearing traditional miners' caps, struck up a tune as confused-looking delegates arrived at the convention center in Katowice, a city in the heart of southern Poland's coal mining country. Coal was proudly displayed in cases around the convention pavilions. Coal, fashioned into jewelry, was for sale. A coal-based cosmetics company even touted products that it claimed would treat both 'body and soul.'"

The difference, analyst Rob, is that the government is no longer prohibiting it. And, BTW, you can't predict the future.

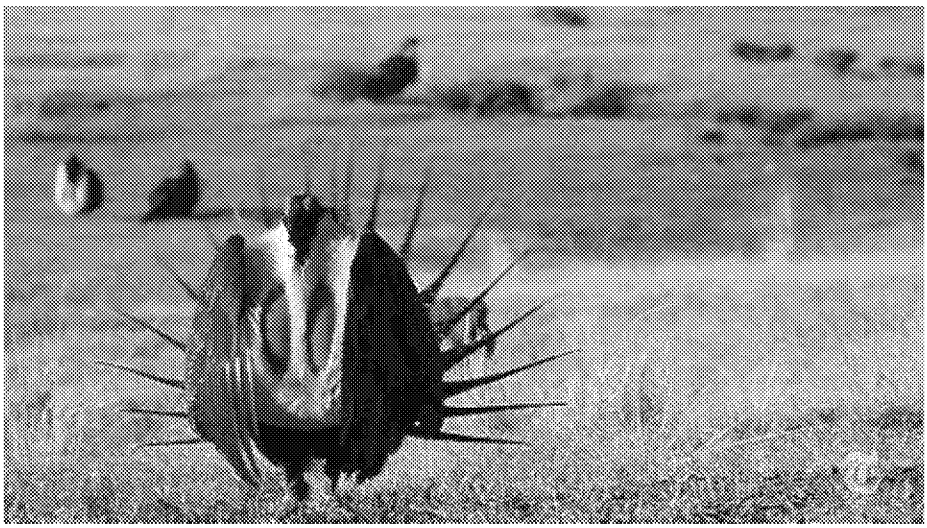
Bloomberg (12/1/18) reports: "The Trump administration is removing a key barrier to constructing new coal-fired power plants in the U.S. -- but don't

expect any utilities to actually build them. The Environmental Protection Agency on Thursday is set to propose easing Obama-era limits on carbon dioxide emissions from new and modified coal power plants that effectively required the use of expensive carbon-capture technology. Although that regulatory mandate was one obstacle to building coal power plants, economic and market realities have created much higher hurdles, which analysts say will endure no matter what the Trump administration does. 'It's doubtful the proposed policy change will make much of a difference to any potential coal power plant developers,' said Rob Barnett, an analyst with Bloomberg Intelligence. 'The economics of building a new coal plant just don't make sense given the availability of abundant and cheap natural gas' that has helped make new coal plants 'among the most expensive electricity options at this point.'"

Open season.

New York Times (12/6/18) reports: "The Trump administration on Thursday published documents detailing its plan to roll back Obama-era protections for the vast habitat of the greater sage grouse, a chicken-like bird that roams across nearly 11 million acres in 10 oil-rich Western states. The earlier proposal to protect the bird, whose waning numbers have brought it close to

endangerment, was put forth under the Interior Department in 2015 and set out to ban or sharply reduce oil and gas drilling in 10.7 million acres of its habitat."



And you're no scientist, either, Jerry.

E&E News (12/5/18) reports: "American carbon tax supporters say it's unfair to draw too many conclusions from the unrest in France over new motor fuel taxes there. That's exactly what President Trump did on Twitter yesterday. The president sent a tweet yesterday after French President Emmanuel Macron bowed to public pressure and temporarily suspended the motor fuel taxes,

which are already among Europe's highest. Macron decided to suspend implementation for six months after waves of protesters — dubbed the yellow vest movement — rioted in major cities for three consecutive weekends...'There's lots of ways you could structure a carbon tax, which would avoid problems like this,' said Jerry Taylor, president of the Niskanen Center. 'It seems to me a little bit silly to constantly obsess over the idea that any increase in prices via tax is somehow the equivalent of bringing us into a European situation.' He added, 'Look, I'm no expert on French politics. But based on the media reports I've seen, these demonstrations and riots and acts of violence have virtually nothing to do with the fuel tax, and a lot to do with other grievances with the French system.'"

Just gonna leave this here.

GREEN MACRON THONK VELLOW

Can somebody explain to me why EPA, DOT, and DOI are all paying Katherine Hayhoe?

Western Wire (12/6/18) column: "Lax standards of conflict of interest disclosures among climate scientists create 'unnecessary vulnerabilities' and should be avoided, according to University of Colorado, Boulder professor and political scientist Roger Pielke, Jr....Pielke pointed to Prof. Katharine Hayhoe, one of the lead authors of the just-released Fourth National Climate Assessment, who published an opinion piece in the *Washington Post* outlining the five myths about climate change she hears most frequently. In her first point, Hayhoe took issue with comments that climate scientists are 'driven by the money they receive' by former Senator Rick Santorum (R-Pa.) on CNN's *State of the Union.* Hayhoe said she would work in a different industry if money were a primary concern but admitted that she does for-profit 'climate-focused consulting' while she is not teaching. She is the Founder and CEO of ATMOS Research & Consulting, whose listed clients include the Union of Concerned Scientists, Environmental Protection Agency, U.S. Fish & Wildlife Service, and Federal Highway Administration."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance

Myron Ebell, Competitive Enterprise Institute

Phil Kerpen, American Commitment

Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity

Joe Bast, Heartland Institute

David Ridenour, National Center for Public Policy Research

Grover Norquist, Americans for Tax Reform

Sabrina Schaeffer, Independent Women's Forum

George Landrith, Frontiers of Freedom

Thomas A. Schatz, Citizens Against Government Waste

Richard Manning, Americans for Limited Government

Adam Brandon, FreedomWorks

Rich Collins, Positive Growth Alliance

Craig Richardson, E&E Legal

The Honorable George Allen, American Energy Freedom Center

Dick Patten, American Business Defense Council

Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute

Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $51.90

Natural Gas: ↓ $4.31

Gasoline: $2.44

Diesel: ↓ $3.12

Heating Oil: ↑ $188.14

Brent Crude Oil: ↑ $61.04

US Rig Count: ↓ 1141

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Subject: Ride off into the sunset, cowboy.

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In the Pipeline

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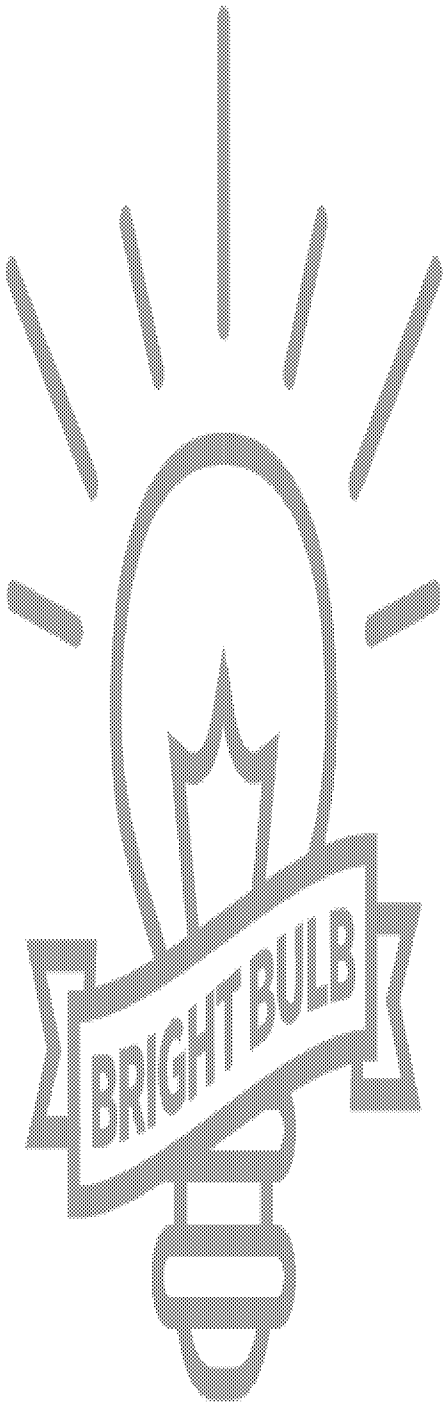
All good things must come to an end.

Daily Caller (12/16/18) reports: "Probably the most visible impacts of Zinke's tenure was the opening up of more lands to energy development, and the scaling back of two national monuments created by Presidents Bill Clinton and Barack Obama. 'Streamlining permitting under the National Environmental Policy Act, reforming regulations on methane venting and flaring, and reorganizing Bears Ears National Monument are just a few of his many significant contributions,' said Tom Pyle, president of the American Energy Alliance and former Trump transition team member...'Most importantly, Zinke has unleashed American energy potential by tapping into the vast resource reserves on federal lands and opening up previously unexplored areas to development,' Pyle said in an emailed statement."

Beers at The Tune Inn tonight?

National Review (12/20/18) column: "As interior secretary, Zinke generated more than his share of controversy. He oversaw a contentious review of national monument designations, promoted Trump's 'energy dominance' agenda, and scaled back several Obama-era regulations — and along the way he encountered strong resistance. Zinke has also been the focus of several ethics investigations, which he has called 'meritless and false claims' and 'vicious and politically motivated attacks' on his character. But despite all the furor and controversy, Zinke's legacy includes several lesser-known initiatives that will have positive lasting effects on conservation and public lands. And even some of Zinke's most controversial policy actions — from monument reductions to regulatory rollbacks — were largely mischaracterized and exaggerated by environmentalists and the media."



"The entire Apollo project to put a man on the moon cost less than $200 billion. We are spending twice that much every year on climate change. This tsunami of government money distorts science in hidden ways that even the scientists who are corrupted often don't appreciate. If you are a young eager-beaver researcher who decides to devote your life to the study of global warming, you're probably not going to do your career any good or get famous by publishing research that the crisis isn't happening."

– Stephen Moore, author of *Trumponomics: Inside the America First Plan to Revive Our Economy*

Are you denying the scientific consensus on the safety of hydraulic fracturing?

Forbes (12/19/18) column: "Senator Barrasso tells us that: 'The nation is leading the way not because of punishing regulations, restrictive laws or carbon taxes but because of innovation and advanced technology, especially in the energy sector.' However, if you follow the links in Senator Barrasso's op ed, you will discover that according to the U.S. Energy Information Administration, the reduction in emission levels is 'mainly because more electricity has been generated from natural gas than from other fossil fuels...natural gas made possible by fracking.' Notably, fracking brings with it all kinds of negative side effects, such as more water pollution, increased vulnerability to earthquakes, and higher frequencies of oil spills. Is this a long solution to reducing greenhouse gas production?"

It's go time.

Daily Caller (12/19/18) reports: "The Trump administration on Thursday put forward a draft proposal to open the Arctic National Wildlife Refuge (ANWR) to oil and gas exploration while at the same time protecting the region's iconic wildlife. The proposal comes nearly one year after President Donald Trump signed GOP-led tax cuts into law. The bill also ordered the Interior Department to open ANWR's coastal plain, or 1002 Area, to oil and gas leases. 'We have undertaken a rigorous review here,' Interior's Assistant Secretary for Land and Minerals Management Joe Balash said in a conference call with reporters Tuesday. Balash said they worked with dozens of scientists and other experts to craft 'a rather robust document.' ANWR encompasses 19 million acres in the northern reaches of Alaska. Former President Jimmy Carter signed legislation in 1980 to create ANWR, but that bill also left open the possibility of drilling in the 1.5-million-acre 1002 Area."

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Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↓ $45.28
Natural Gas: ↑ $3.65
Gasoline: ↓ $2.35
Diesel: ↓ $3.05
Heating Oil: ↑ $172.06
Brent Crude Oil: ↓ $53.10
US Rig Count: ↓ 1125

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on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 9/20/2018 2:43:56 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Why do environmentalists hate the poor?

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In the Pipeline

MORNING ENERGY NEWS | 9.20.2018

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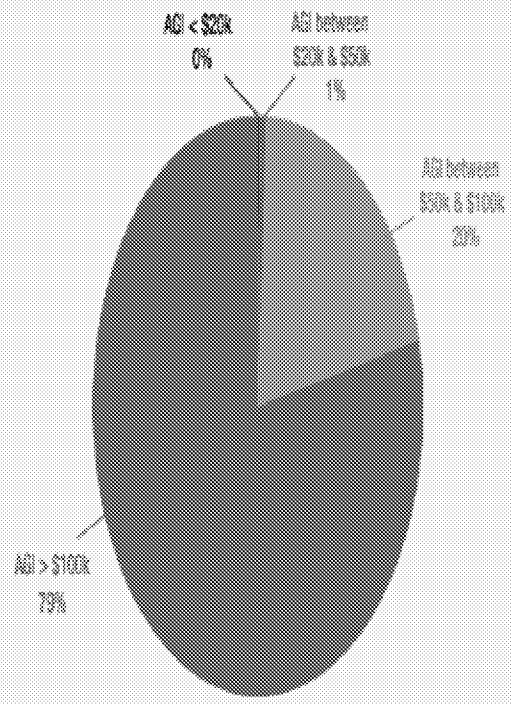
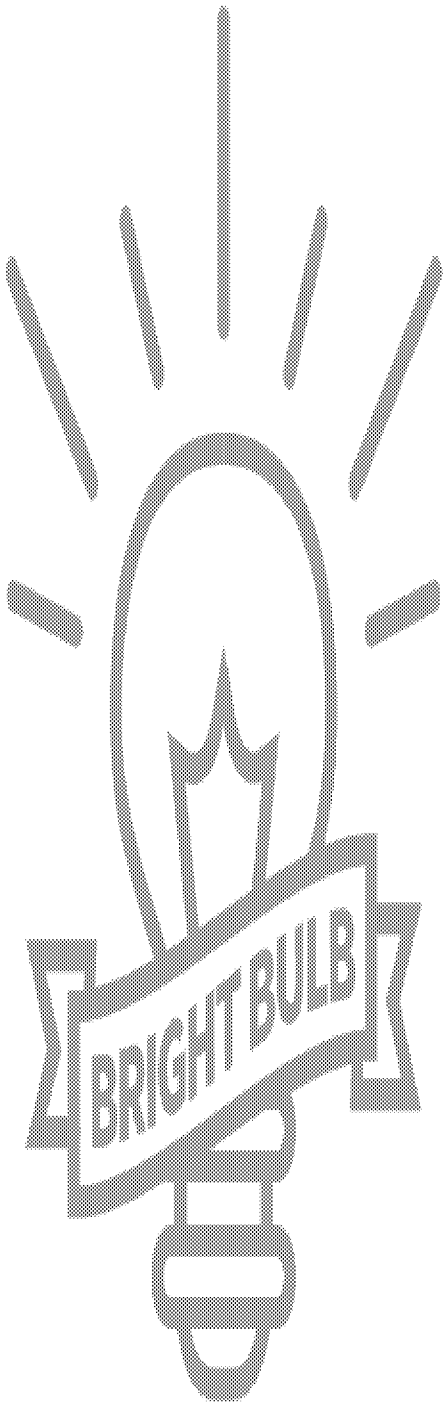
Did you know that 79% of EV tax credits go to households with incomes of $100,000 or higher...

Reason (9/19/18) blog: "The Federal government currently offers a $7,500 tax credit to purchasers of electric vehicles (EV). A Pacific Research Institute study published earlier this year reported that 78.7 percent of the EV tax credits were received by households with an adjusted gross income (AGI) of $100,000 or higher, and that more than half went to households with an AGI in excess of $200,000. Basically, the federal government is subsidizing rich people to indulge their tastes in driving expensive electric vehicles."

Figure 2
Electric Vehicle Plug-in Tax Credit Received by Adjusted Gross Income
2014 Tax Year



TOTAL TAX CREDIT PAID: $263.3 MILLION



"All of this is so unnecessary. If wind and solar are truly the energy sources of the future -- with reliability and low costs -- let the market determine that. Why do they need mandates and billions of dollars of federal subsidies to make them work? This is an experiment of imposing high costs on American small businesses, farms and families to pay off wealthy green energy investors. Could anything be more illiberal than this?"

– Stephen Moore, Heritage Foundation

...we did and we want to put an end to welfare for the wealthy.

Daily Caller (9/19/18) reports: "A coalition of 30 free market and conservative groups is calling on Congress to block an expansion of the electric vehicle tax credit...The coalition — led by American Energy Alliance — includes numerous free market organizations such as Americans for Prosperity, Americans for Tax Reform, Competitive Enterprise Institute and others. 'The electric vehicle tax credit subsidizes expensive vehicles that only a fraction of wealthy Americans want and that do not necessarily pollute less than modern internal combustion engines,' said American Energy Alliance President Thomas Pyle in a prepared statement. 'Why should a typical middle class American family — with a median annual income of $44,000 — subsidize the lifestyles of the rich and famous? Political leaders should recognize that Americans can make their own decisions about how to spend their money and what cars they want to drive. We shouldn't give handouts to wealthy individuals to help defray the cost of their luxury vehicles,' Pyle continued."

Did you also know that solar and wind mandates tax the poor and middle class?

RealClearPolitics (9/18/18) op-ed: "Liberals love to talk about helping the poor and the middle class, and they are obsessed with reducing income inequality. So why is it that across the country they are pushing one of the most regressive taxes in modern times? I am talking about the fad "green" initiative in states such as California, Arizona and New Jersey that require local utilities to buy expensive renewable energy...These mandates aren't just dangerous. They will raise electric power costs sharply. The Wall Street Journal reported last week that residents of states like California and New Jersey with strict renewable mandates pay about 25 percent more in monthly electric utility bills than states that let the market place choose the lowest cost forms of power...Low-income households spend at least four to five times more out of their incomes in energy costs than do millionaires. For a family with an income of $40,000 or $50,000, an extra $500 a year in costs means less money for school supplies, day care, a family vacation or health insurance."

Bye bye methane regs.

The Hill (9/20/18) reports: "This week, the Interior Department's Bureau of Land Management (BLM) released a final rule that would weaken methane pollution rules for drillers on public lands. It follows an earlier proposal from the Environmental Protection Agency (EPA) that eased regulatory and monitoring rules for methane, with more actions coming... It's also a major blow to Obama's aggressive climate change agenda, which the Trump administration has been steadily dismantling, including through proposals to repeal the Clean Power Plan and carbon dioxide limits for cars."

It's time to lay some pipe.

Washington Examiner ((/19/18) reports: "The Energy Department says a lack of pipelines is beginning to drive oil companies out of the big shale region known as the Permian Basin, as they focus investment in regions where the oil is easier to get to market...The oil firm Baker Hughes is cutting the number of drilling rigs in the Permian, and the Houston-based Noble Energy announced "the reallocation of capital expenditures from the Permian to other U.S. onshore basins because of the transportation constraints," EIA said."

Energy Markets

WTI Crude Oil: ↑ $71.13
Natural Gas: ↑ $2.92
Gasoline: ↑ $2.85
Diesel: ↑ $3.18
Heating Oil: ↓ $223.92
Brent Crude Oil:↓ $78.84
US Rig Count: ↑ ↓ 1137

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To: Woods, Clint [woods.clint@epa.gov]
Subject: One more round!

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MORNING ENERGY NEWS | 11.28.2018

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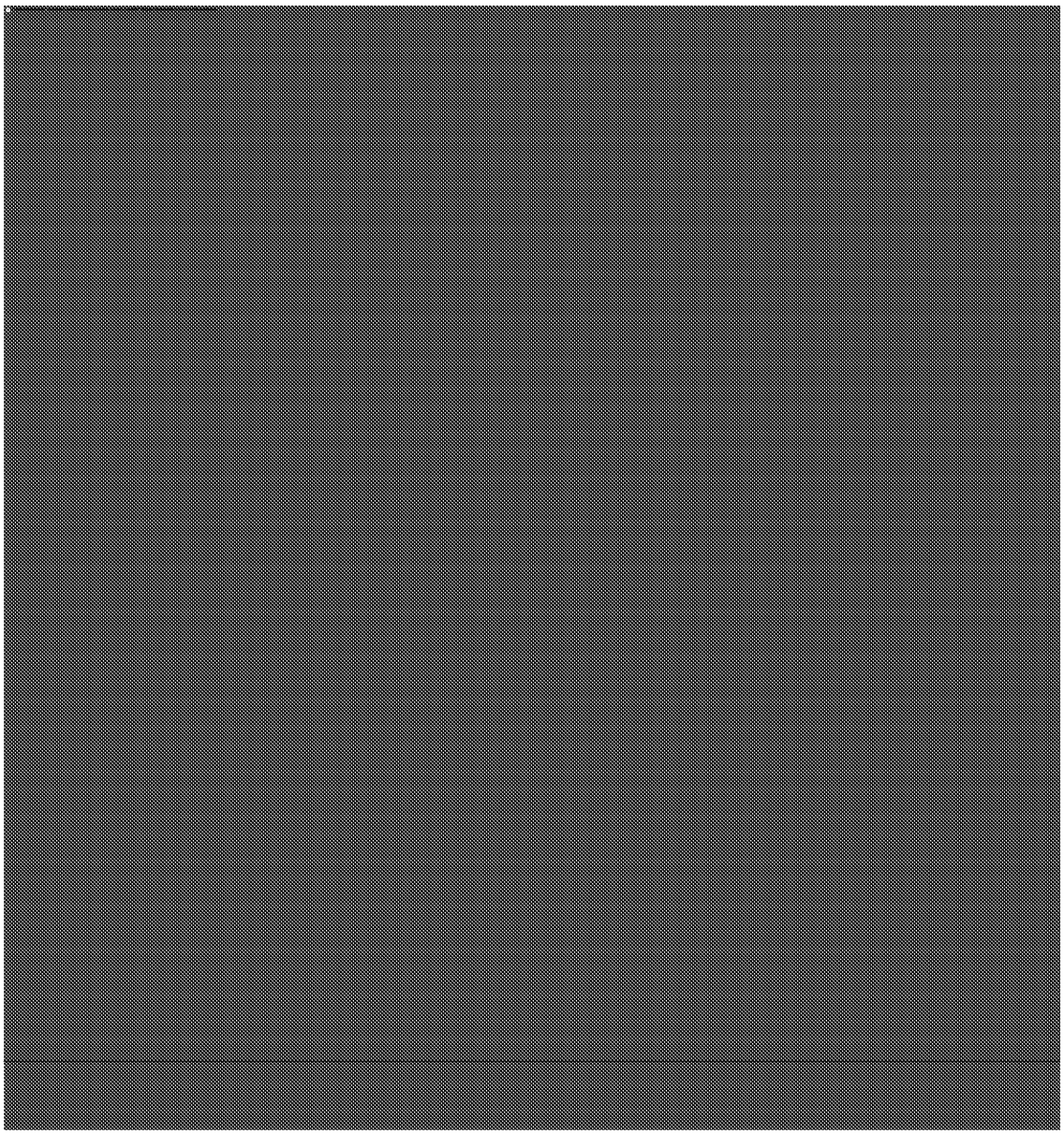
Sen. Hatch, seize the opportunity to go out on top.

The Hill (11/27/18) opinion: "Congress returned to Washington this week to start its now ritual end-of-the-year lame-duck session — the final one for Sen. Orrin Hatch of Utah, who will be retiring at the end of the year... Given his storied career, it is not a surprise the President Trump honored Sen. Hatch with the Presidential Medal of Freedom. However, looming over Hatch's final days in the Senate is the possibility of yet another 'tax extenders' bill, a hodgepodge of corporate and special interest tax breaks ranging from biodiesel manufacturing and motorsports complexes to racehorses and alternative vehicles... Let's hope that Sen. Hatch has one more fight in him by refusing to advance yet another tax extenders package. At a minimum, let's hope he protects Utah taxpayers by blocking the lobbying push from Sen. Heller, Tesla's Elon Musk, and GM's Mary Barra to lift the production cap on his EV tax credit."



"Scientists should have the wisdom and the modesty to admit that we have no idea what will happen to our planet as climate change continues over the next century. There are too many variables to hazard a decent guess. But the one indomitable lesson of history is that giving the government more power is the most dangerous threat to the future of our planet."

– Stephen Moore, *The Heritage Foundation*

land·mark: /ˈlan(d)ˌmärk/ noun
1. bill introduced in lame duck session of Congress with zero chance of passage but gives ammo to pro energy tax crowd.

The Hill (11/28/18) reports: "A bipartisan group of lawmakers is introducing a landmark bill that would charge fossil fuel companies a tax for their carbon dioxide emissions. The Energy Innovation and Carbon Dividend Act, announced by two Republicans and three Democratic members of the House on Tuesday, would charge $15 for each ton of carbon emitted into the air and would increase that fee by $10 every year afterward, in an effort to fight climate change."

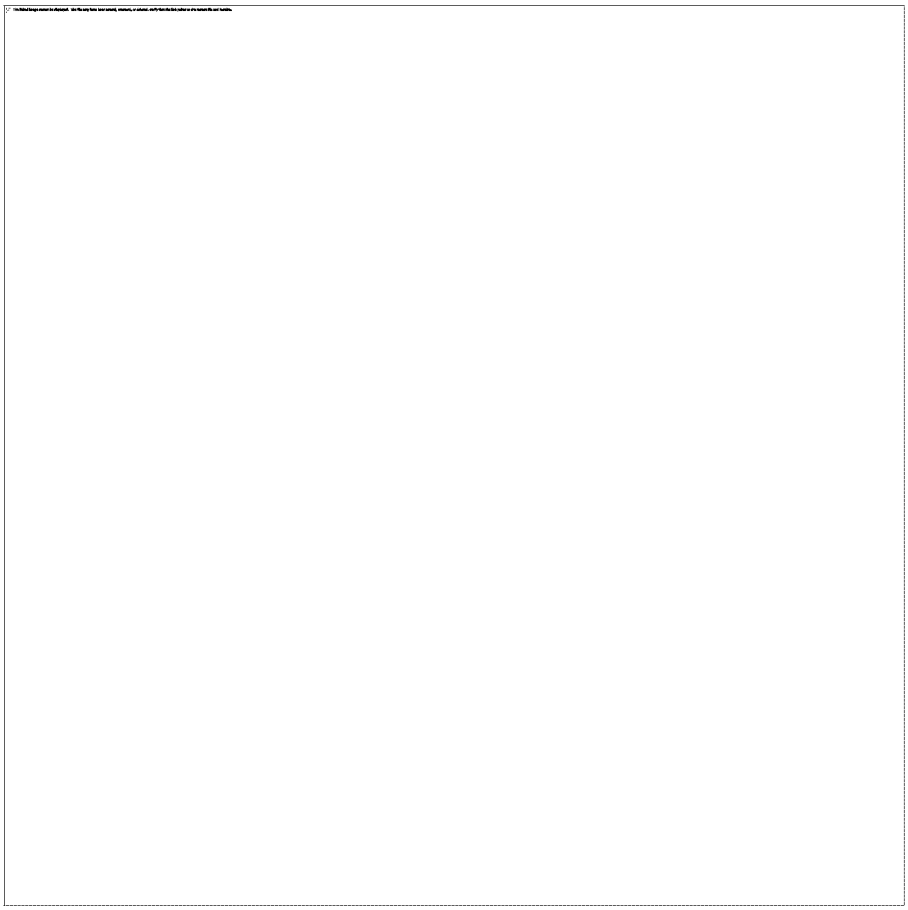
Time to end the boondoggle.

Washington Examiner (11/27/18) reports: "President Trump threatened Tuesday to cut General Motors' federal subsidies, including for electric vehicles, after the carmaker announced that it would lay off thousands of workers and shutter several North American facilities to focus attention on emissions-free and self-driving vehicles... One related issue that could come up

in Congress in the coming weeks is the expiration of an up to $7,500 tax credit for individuals who purchase electric vehicles. The industry is pushing Congress to renew that program, which lapses at the end of 2018. During a media availability a few hours after Trump's tweets Rep. Kevin Brady R-Texas, the lead tax policy lawmaker in the House of Representatives, said he didn't 'anticipate any action on that in this session.'"

Not all news is bad news.

Forbes (11/23/18) reports: "The approaching 2019 will be the most significant year ever for the U.S. liquefied natural gas export business Next year really is: 'the beginning of the boom.' The U.S. is poised to triple export capacity to around 10 Bcf/d by the end of next year, and we could be on our way to be the world's largest exporter before 2025. And in a 'second wave' of activity, federal regulators will decide the fate of an additional 13 pending projects by the end of 2019. For an industry that just started in February 2016, U.S. LNG has quickly been extending to all corners of the globe."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Energy Markets

WTI Crude Oil: ↓ $51.45
Natural Gas: ↓ $4.23
Gasoline: $2.52
Diesel: $3.18
Heating Oil: ↓ $187.89
Brent Crude Oil: ↓ $59.89
US Rig Count: ↓ 1124

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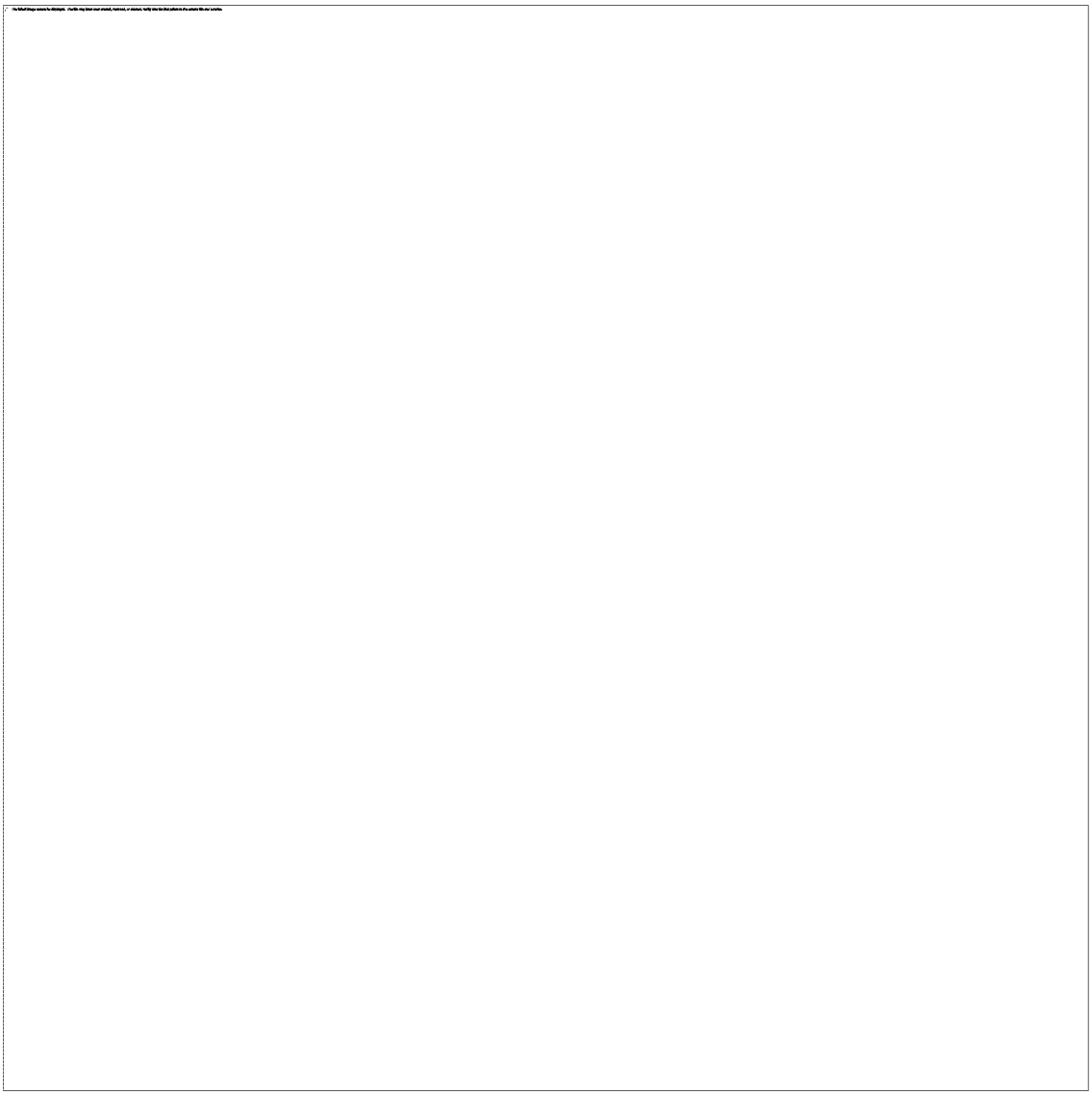
The best is yet to come and, babe, won't it be fine?

New York Times (5/27/19) reports: "President Trump has rolled back environmental regulations, pulled the United States out of the Paris climate accord, brushed aside dire predictions about the effects of climate change, and turned the term 'global warming' into a punch line rather than a prognosis. Now, after two years spent unraveling the policies of his predecessors, Mr. Trump and his political appointees are launching a new assault. In the next few months, the White House will complete the rollback of the most significant federal effort to curb greenhouse-gas emissions, initiated during the Obama administration...'They've started talking about how they can produce a report that doesn't lead to some silly alarmist predictions about the future,' said Myron Ebell, who heads the energy program at the Competitive Enterprise Institute, an industry-funded research organization, and who led the administration's transition at the E.P.A."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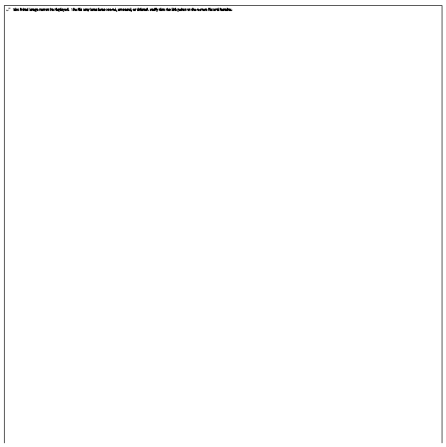

"'Saving the planet' should be an unbeatable political slogan. Yet consistently the imagined 'green wave' mindlessly embraced by most of the media continues to fall short, as evidenced by recent elections in Canada and Australia, as well as across much of Europe."

– Joel Kotkin, Chapman University

It's a revolution. It's an epiphany. It's...a tunnel for one car.

Jalopnik (5/25/19) reports: "Back in 2017, Elon Musk had grand visions for the test track built by The Boring Company, his tunneling firm, in Los Angeles. The Boring Company's tunneling work was closely linked to Musk's Hyperloop idea,

which would require hundreds of miles of tunneling to be viable, although the actual test track in California bore none of the traits of an air vacuum-based transportation system. It would have proprietary vehicles with varying capacities for private travel, public transport, or freight. They would travel along electrified skates for frictionless movement...Six months ago, the first demonstration of that track didn't quite match that vision: it was a Tesla Model X on a sled going down a very bumpy tunnel at roughly 50 mph. Credit where credit's due: it does appear to be smooth as glass now, according to a video The Boring Company released of a car going 127 mph down the tunnel. How did it achieve such miraculous speed and comfort improvements in a mere six months? They paved it. Yes, for those keeping score, in a mere two years we've gone from a futuristic vision of electric skates zooming around a variety of vehicles in a network of underground tunnels to—and I cannot stress this enough—a very small, paved tunnel that can fit one (1) car."

Touché

American Institute for Economic Research (5/20/19) column: "A recent study by the California Energy Commission, as reported by the Los Angeles Times, has suggested the state's high gas prices may be the result of 'market manipulation' on the part of Big Oil. The memo passed along to Governor Gavin Newsom

also suggested other factors such as refinery outages and environmental regulations, but it was the term 'market manipulation' that was plastered across the headlines, most likely designed to fuel customer anger at private market suppliers. But the logic that 'market manipulation' by oligopolistic producers is to blame, even in part, for high prices fails to hold up to a few simple questions: If Big Oil is so powerful as to raise California gas prices to such exorbitant levels, why don't they do this on a consistent basis? Why not raise the price of gasoline to its highest-water mark over the past five years and leave it there? Why should gasoline prices ever fall?"

Well, the good news here is that South Africa has a remarkably resilient grid known for handling demand with ease...

NPR (5/26/19) reports: "A carbon tax in South Africa will go into effect on June 1. President Cyril Ramaphosa signed the measure into law on Sunday, making South Africa one of about 40 countries worldwide to adopt a carbon-pricing program...The tax will be introduced in phases: The first phase will run until December 2022 and will tax carbon at a rate of about $8.34 per ton of CO2 equivalent. But according to a statement from the National Treasury, tax breaks will significantly reduce the effective rate of the tax. The treasury will assess the

impact of the tax and the country's progress toward emissions goals before the second phase of the policy, which will start in 2023 and end in 2030."

Oh wait...

Financial Times (3/18/19) reports: "Factories, traffic lights and mobile phone connections sputtered across South Africa on Monday as the indebted state-owned electricity monopoly imposed a third day of severe outages. Eskom said it was 'working round the clock' to restore multiple units that broke down and choked Africa's most industrialised economy...In Johannesburg, the country's economic hub, blackouts triggered rush-hour gridlock because traffic lights at busy junctions no longer worked. Workers had to cut short their day so that they could get home before power cuts shut down electric gates and locked them out of their properties. South Africans have joked that stage five blackouts would involve Eskom coming to their homes to blow out the candles. Up to stage eight—meaning 12-hour blackouts—is technically possible if shortages worsen."

Energy Markets

WTI Crude Oil: ↑ $59.09
Natural Gas: ↓ $2.56
Gasoline: ↓ $2.83
Diesel: ↓ $3.09
Heating Oil: ↑ $201.90
Brent Crude Oil: ↑ $70.29
US Rig Count: ↑ 1029

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Sent: 5/8/2019 3:23:45 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: More Bloomberg climate corruption

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MORNING ENERGY NEWS | 5.8.2019

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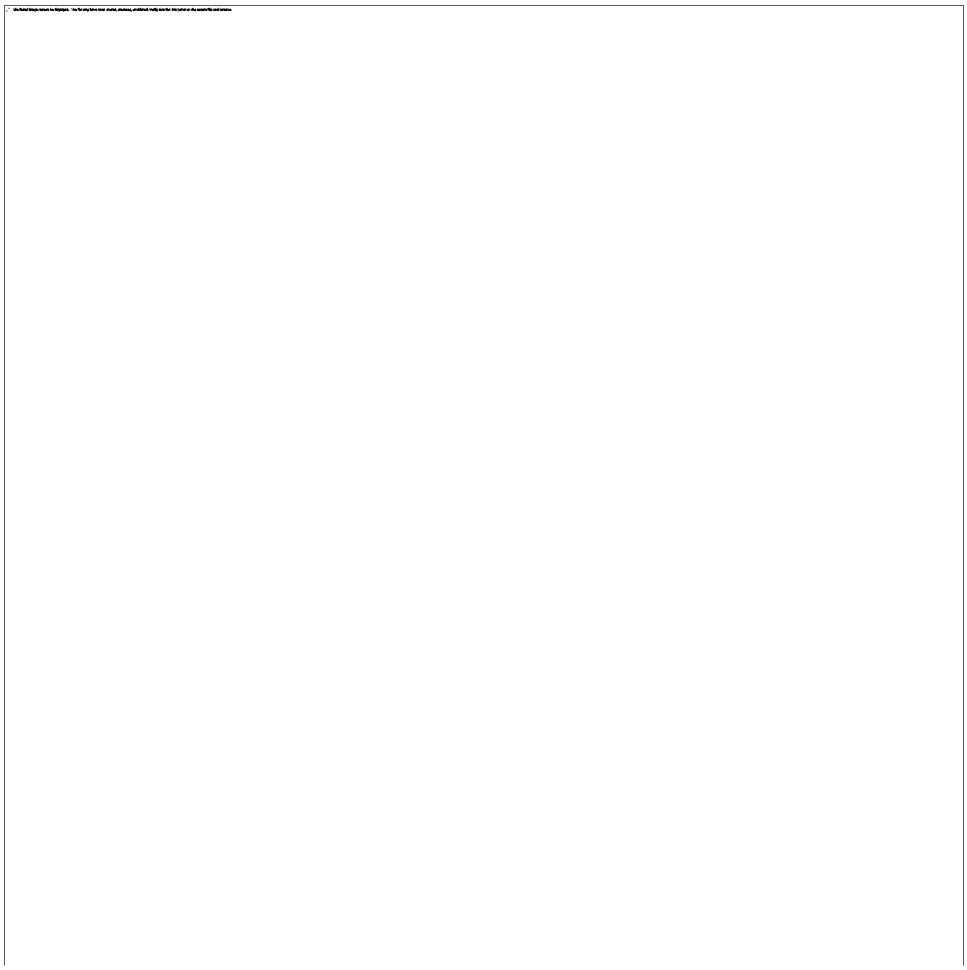
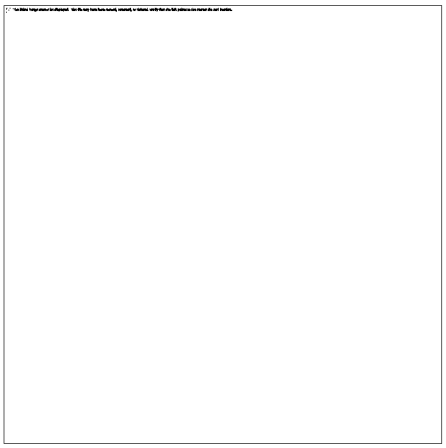
Michael Bloomberg is paying a climate prosecutor $125,000 to work 'pro bono' for Maryland's AG.

Daily Caller (5/7/19) reports: "A climate prosecutor employed by Maryland Attorney General Brian Frosh on a 'pro bono' basis is taking a $125,000 salary from a group backed by billionaire Michael Bloomberg, according to the nonprofit law firm Government Accountability & Oversight (GAO). The State Energy and Environmental Impact Center is a New York University (NYU) School of Law program that places professional lawyers with years of experience into the offices of blue state attorneys general. The center is funded by Bloomberg, the former mayor of New York City and a climate change activist."



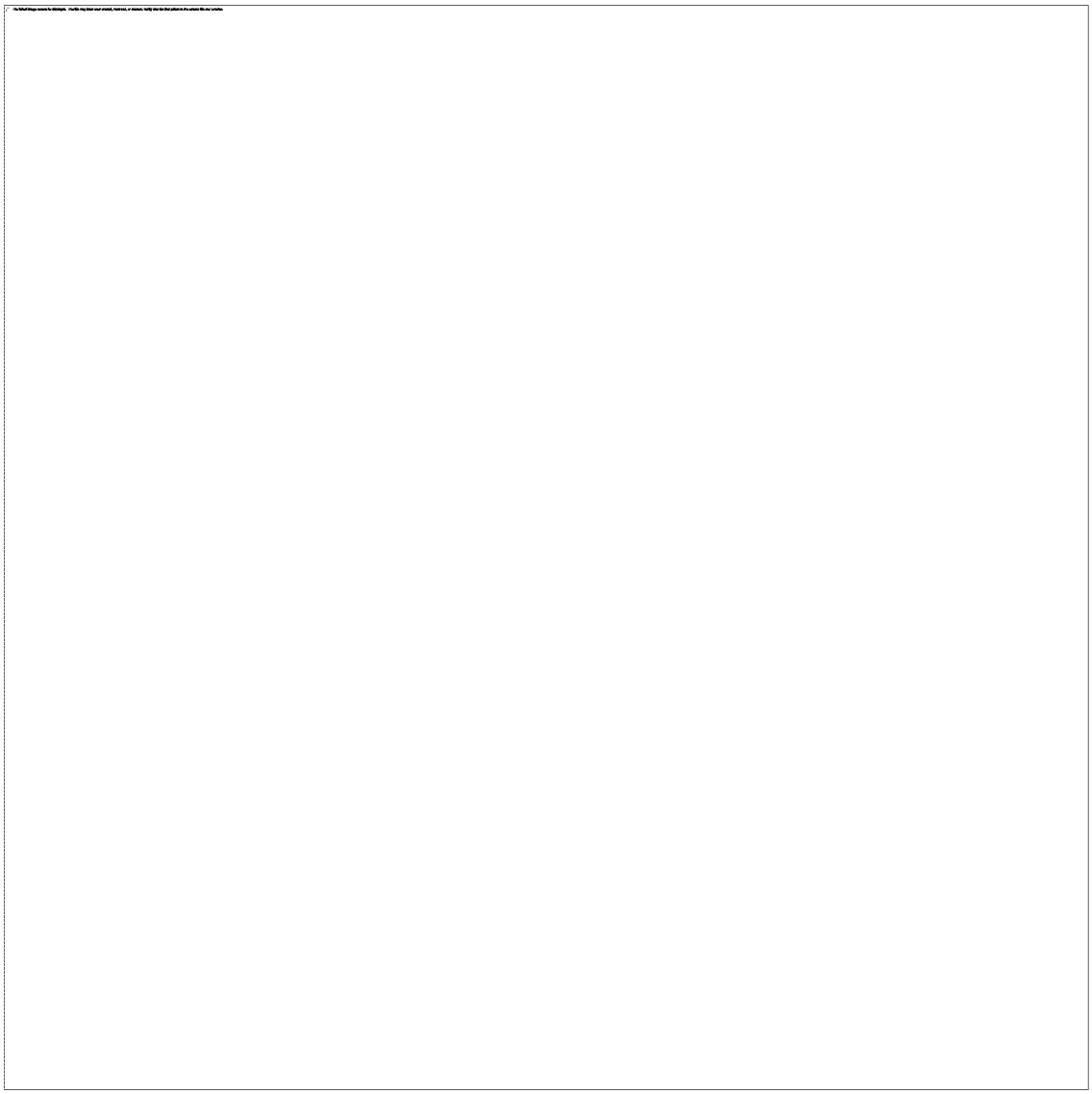


"The significant point in this cost-benefit business is that there is virtually no certainty about any of the numbers that are used to calculate either the likely change of climate or the impact of that change on future populations. In essence, it is simply assumed that all climate change is bad—that the current climate is the best of all possible climates. Furthermore, there is little or no recognition in most of the scenarios that mankind is very good at adapting to new circumstances. "

–Garth Paltridge, The Quadrant

The world is slowly coming to its senses.

IEA (5/7/19) reports: "After nearly two decades of strong annual growth, renewables around the world added as much net capacity in 2018 as they did in 2017, an unexpected flattening of growth trends that raises concerns about meeting long-term climate goals. Last year was the first time since 2001 that growth in renewable power capacity failed to increase year on year. New net capacity from solar PV, wind, hydro, bioenergy, and other renewable power sources increased by about 180 Gigawatts (GW) in 2018, the same as the previous year, according to the International Energy Agency's latest data."



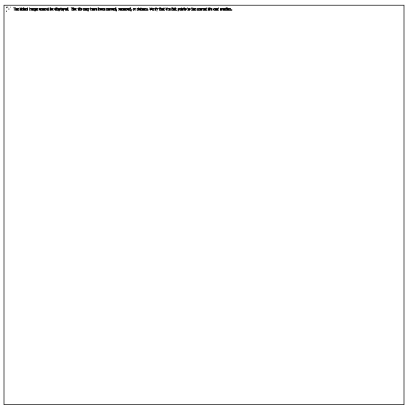
This is a no brainer, Canada.

Bloomberg (5/7/19) reports: "The Canadian government is likely to proceed with expansion of the Trans Mountain oil pipeline when it announces its final decision on the conduit next month, officials familiar with the matter say. The government has made no secret about its interest in finding a way to expand the line, but has tiptoed around the matter to avoid opening any decision up to legal challenges that have already delayed the project -- and things remain fluid as consultations continue. However, with a June 18 decision approaching, the government is likely to proceed with the expansion, the officials said, speaking on condition of anonymity because they're not authorized to speak publicly."

Federal government illegally fails to account for at least $1.9 trillion in estimated regulatory costs.

Competitive Enterprise Institute (5/7/19) reports: "For decades, the federal government has failed to provide a legally required accounting of the regulatory costs it imposes on the rest of us. To address that problem, CEI Vice President for Policy Wayne Crews compiles a cost estimate of $1.9 trillion annually,

based on available sources, from governmental to academic to industry. That amounts to about 43 percent of fiscal budget outlays, of $4.412 trillion, and more than double the anticipated deficit, expected to soar to $897 billion. This is a conservative estimate, considering the vast information gaps in government reporting and the difficulty in quantifying more intangible costs, such as loss of freedom, regulatory uncertainty for entrepreneurs and businesses, and harms regulation can cause."



Dem's plan: ban everything and make everyone miserable.

Washington Examiner (5/6/19) reports: "A bill that would ban plastic bags from

grocery stores in New Jersey could get a lot stricter, according to the legislation's sponsor. State Sen. Bob Smith, a Democrat, wants the bill, which included ban plastic straws and Styrofoam containers, to also prohibit paper bags. The legislation, which seeks to push shoppers to bring their own reusable bags, currently has a 10-cent charge for paper bags. 'No bags whatsoever,' Smith told NJ.com. 'No single-use plastic, no paper.'"

Energy Markets

WTI Crude Oil: ↑ $61.50
Natural Gas: ↑ $2.57
Gasoline: ↓ $2.88
Diesel: ↑ $3.10
Heating Oil: ↑ $204.17
Brent Crude Oil: ↓ $69.80
US Rig Count: ↓ 1032

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Message

From: Dolley Madison [fedsoc@fed-soc.ccsend.com]
on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 12/7/2018 1:33:42 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: New at The Federalist Society

National Student Symposium, NLC Videos, Civil Asset Forfeiture, New Podcasts

THE FEDERALIST SOCIETY

December 7, 2018

2019 National Student Symposium

March 15-16, 2019 | Phoenix, AZ
The Federalist Society is excited to announce that the 38th National Student Symposium will be hosted by the Arizona State University chapter at the Sandra Day O'Connor College of Law in Phoenix, AZ. The theme for the Symposium will be "The Resurgence of Economic Liberty." The Symposium's panels will focus on the legal and philosophical roots of economic liberty and explore how those roots

should inform jurisprudence and political thought in addressing contemporary issues. Additional information can be found on the Symposium's official website.
[Register]

Upcoming Events Across the Country

Our website contains a detailed list of events. [Find an event] #FedSocEvents

Chapter	*Topic & Speakers*	*Date & Time*
Kansas City Lawyers Chapter	A Missouri Supreme Court Review • **Hon. Zel M. Fischer,** Chief Justice, Missouri Supreme Court	December 7 11:00 a.m.
Montgomery Lawyers Chapter	FDR and Court Packing • **Dr. Burton Folsom, Jr.,** Professor Emeritus, Hillsdale College	December 7 11:30 a.m.
Colorado Lawyers Chapter	The Federal Judicial Nomination/Confirmation Process: Its Past and Future • **Gregg Nunziata,** Partner, Manatt, Phelps & Phillips, LLP & former chief nominations counsel, U.S. Senate Committee on the Judiciary	December 7 12:00 p.m.
Philadelphia Lawyers Chapter	Incarceration In The Age Of Trump • **Richard Berk,** Chairman of the Criminology Department at the University of Pennsylvania • **Paul Larkin,** Senior Legal Research Fellow, Meese Center for Legal and Judicial Studies, Institute for	December 7 7:00 p.m.

	Constitutional Government at The Heritage Foundation	
Connecticut Lawyers Chapter	Holiday Happy Hour	December 7 7:00 p.m.
Boston Lawyers Chapter	2018 Christmas Party	December 10 5:30 p.m.
DC Young Lawyers Chapter, Capitol Hill Chapter	Discussion with Senator Jon Kyl • **Hon. Jon Kyl,** United States Senator, Arizona	December 10 5:30 p.m.
St. Louis Lawyers Chapter	2018 Christmas Party	December 10 6:00 p.m.
Richmond Lawyers Chapter	The New Supreme Court and the Future of Judicial Nominations • **Ilya Shapiro,** Senior Fellow in Constitutional Studies, Editor-in-Chief of the Cato Supreme Court Review	December 11 12:00 p.m.
Charleston Lawyers Chapter	Reception with Former Representative Sue Myrick • **Former Rep. Sue Myrick,** U.S. Representative for North Carolina's 9th Congressional District	December 11 5:00 p.m.
Austin Lawyers Chapter	Austin Lawyers Chapter Holiday Happy Hour	December 11 5:30 p.m.
San Diego Lawyers Chapter	San Diego Federalist Society Holiday Party	December 12 6:00 p.m.
Puerto Rico Lawyers Chapter	Debating the Privacy Push: Preventing Regulatory Overreach • **Michael J. Daugherty,** CEO LabMD; Author, *The Devil Inside the Beltway*	December 12 6:30 p.m.

	• **Alejandro Mercado Esq.,** Privacy Counsel, Triple-S Management Corporation	
New Jersey Lawyers Chapter	Appellate Advocacy Post-Scalia, in a World of Originalism and Textualism • **Hon. Stephanos Bibas,** U.S. Court of Appeals, Third Circuit	December 12 6:30 p.m.
Austin Lawyers Chapter	Constitutional Studies • **Ilya Shapiro,** Senior Fellow in Constitutional Studies, the Cato Institute; Editor-in-chief, Cato Supreme Court Review	December 13 11:30 a.m.
Nashville Lawyers Chapter	A Name Worth Fighting For • **Simon Tam,** Supreme Court Plaintiff (Matal v. Tam)	December 13 11:45 a.m.
Indianapolis Lawyers Chapter	Federalist Society Happy Hour	December 13 5:00 p.m.

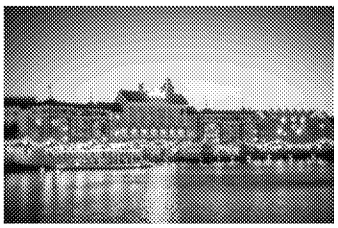
21st Annual Faculty Conference

January 3-4, 2019 | New Orleans, LA
Registration is open for the 21st Annual Faculty Conference. The conference will feature panels on substantive due process, tech privacy and data security, and antitrust. The winners of our Young Legal Scholars Paper Competition will present their papers, and various other attendees will invite feedback on works they have in progress. To view the full schedule and to register, visit our website.
[Register]

2019 Annual Western Chapters Conference

January 26, 2019 | Simi Valley, CA
Registration is open for the 2019 Annual Western Chapters Conference, which will be held at the Ronald Reagan Presidential Library. To view the full schedule, including the list of speakers, visit our website.
[Register]

2019 Annual Florida Chapters Conference



February 1-2, 2019 | Lake Buena Vista, FL
Save the date for the 2019 Annual Florida Chapters Conference, which will be held at Disney's Yacht & Beach Club Resort. For more information, visit our website.
[Learn More]

Olin-Searle-Smith-Darling Fellows in Law

The Olin-Searle-Smith-Darling Fellows in Law program offers top young legal thinkers the opportunity to spend one to two years working on developing their scholarship or engaging in clinical work with the goal of entering the legal academy. Applications are available for full-time, part-time, and clinical fellowships. The deadline to apply is March 15, 2019.
[Apply]

Interested in attending one of our many student events? [Find an event]

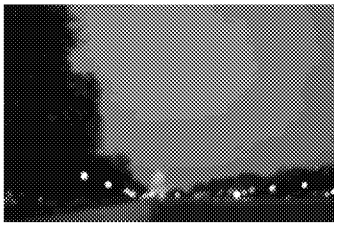
New Online

[ARTICLE] Pompeo: Current Model of Global Governance Is Failing

Global Governance Watch

In remarks at a German Marshall Fund event in Brussels, US Secretary of State Mike Pompeo warned that, since the end of the Cold War, the international order has "failed" the people and said the US would work toward bolstering only international bodies that are effective, "create value," and "respect national sovereignty."
[Read]

[VIDEO] 2018 National Lawyers Convention



Opening Address by Senator Mike Lee

- Featuring Sen. Mike Lee, Leonard A. Leo

18th Annual Barbara K. Olson Memorial Lecture

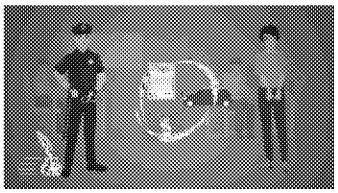
- Featuring Judge Jeffrey Sutton, Eugene B. Meyer

Address by Alex Azar

- Featuring Hon. Alex Azar, Dean Reuter

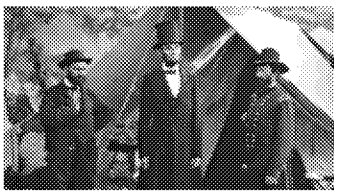
[Watch]

[VIDEO] Civil Asset Forfeiture: An Overview & Conversation



POLICYbrief: Criminal Justice Series
Featuring Stefan Cassella, Darpana Sheth
[Watch]

[VIDEO] By Virtue: Three Executive Orders that Shaped American Law

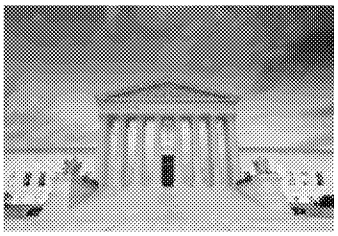


Short Film
Featuring John Yoo, Roger Pilon, Todd F. Gaziano, Heidi Kitrosser
[Watch]

[PODCAST] Courthouse Steps Oral Argument: Timbs v. Indiana

Criminal Law & Procedure Practice Group
Featuring Darpana Sheth
[Listen]

[PODCAST] Courthouse Steps Decision: Weyerhaeuser v. United States Fish & Wildlife Service



Environmental Law & Property Rights Practice Group
Featuring Mark Miller
[Listen]

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Message

From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 1/18/2019 3:42:46 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Scandalous

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In the Pipeline

MORNING ENERGY NEWS | 1.18.2019

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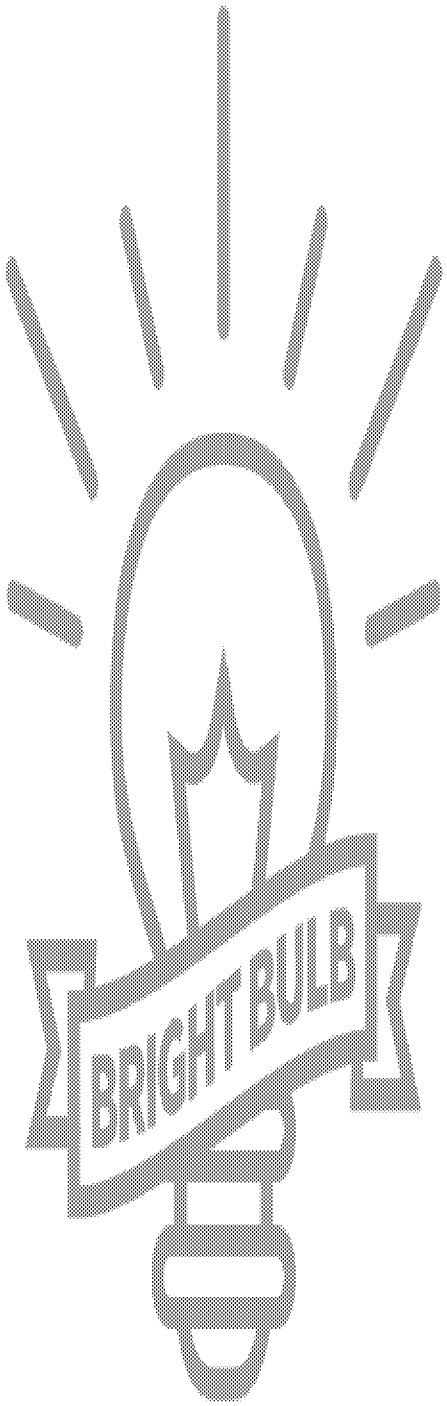
If the Koch Brothers were doing this with conservative AGs, the media would be calling it scandalous. Because it's Bloomberg...crickets.

Washington Free Beacon (1/16/19) reports: "An environmental center within New York University's School of Law that was created and funded by former New York City mayor Michael Bloomberg has been executing a tightly knit public relations strategy with 'progressive' state attorney general offices (OAGs), according to multiple emails obtained through open records requests. Critics of such arrangements say that media coordination between NYU's State Energy & Environmental Impact Center (SEEIC) and the OAGs raises ethical questions because of the attorney-client relationship between states and attorneys general. The SEEIC's methods generated some controversy after the Competitive Enterprise Institute, a free-market think tank

based in D.C., published a lengthy exposé last August backed by reams of government documents showing that the law center was paying for their own attorneys to be placed with OAGs across the country to do extra work on energy and climate litigation."



"But because of this very same market failure, there's no way that government officials either can know the optimal 'emissions reductions goals' or have any real incentive to be guided by them. Any such chosen goals cannot possibly be based on accurate economic knowledge. Such goals would at best be arbitrary, with a good chance of being set too high given political-elites' long-standing proclivity to focus on carbon-emissions' downsides while ignoring the upsides."

– Donald J. Boudreaux, the Martha and Nelson Getchell Chair for the Study of Free Market Capitalism at George Mason University

Congratulations, Daniel!

New Yorkers continues to get hammered by King "Keep It In The Ground" Cuomo.

Energy In Depth (1/16/19) reports: "A protest over the weekend is just the latest in a series of attempts by "Keep It In the Ground" (KIITG) activists and New York Gov. Cuomo to stymie natural gas pipeline development throughout the state, despite the economic toll of limiting reliable natural gas supply to the region. This is the second time in less than a month that activists have protested National Fuel's Northern Access Pipeline, whose construction has been delayed by the New York Department of Environmental Conservation's (DEC) denial of a necessary water permit in April 2017. The Federal Energy Regulatory Commission overturned the state agency's decision in August on the grounds that DEC failed to act in a timely manner. The $500 million pipeline would carry much needed natural gas from Pennsylvania's shale fields to Western New York and Canada, and "will provide consumers with increased access to abundant energy supplies, while also improving reliability and resiliency of the energy grid," according to the company. Despite the Cuomo administration's repeated obstruction, natural gas continues to prove instrumental in meeting New York's energy needs and reducing emissions. This contradictory approach to New York's energy future was never more apparent than when the state banned high-volume fracking while

simultaneously releasing an energy plan advocating for the increased use of natural gas *the same week*. New York is the sixth-largest U.S. natural gas consumer and receives nearly 46 percent of its electricity generation from natural gas, yet it holds less than 0.05 percent of the nation's total reserves."

Not satisfied with simply blocking pipelines, Cuomo wants to make poor New Yorker's even poorer by making electricity more expensive.

Bloomberg (1/18/19) reports: "New York's plan to put the state's last coal-fired power plants out of business hasn't even been approved yet and electricity is already trading like they're shut. The price of power in 2021 in New York City and other regions surged more than 30 percent beginning in May. The only major difference between then and now: a pending state rule to limit power-plant emissions that was designed to eliminate coal-burning power plants by the end of 2020."

Prince Elon the Benevolent.

CNN (1/18/19) reports: "Tesla has announced plans to reduce its full-time workforce by 7% as it works to increase Model 3 production and cut prices. CEO Elon Musk told workers about the job cuts Friday in a letter that Tesla posted online. The company will only retain the most critical temps and contractors, Musk said.
Must wrote in the letter that Tesla is 'up against massive, entrenched competitors' and must work 'much harder than other manufacturers to survive while building affordable, sustainable products.' Tesla currently has about 45,000 employees, so 3,150 people will be losing their jobs. The layoffs follow a surprise profit of $312 million for Tesla in the third quarter driven by solid sales of the Model 3. But Musk said Friday that unaudited results indicate Tesla will produce less profit in the fourth quarter."

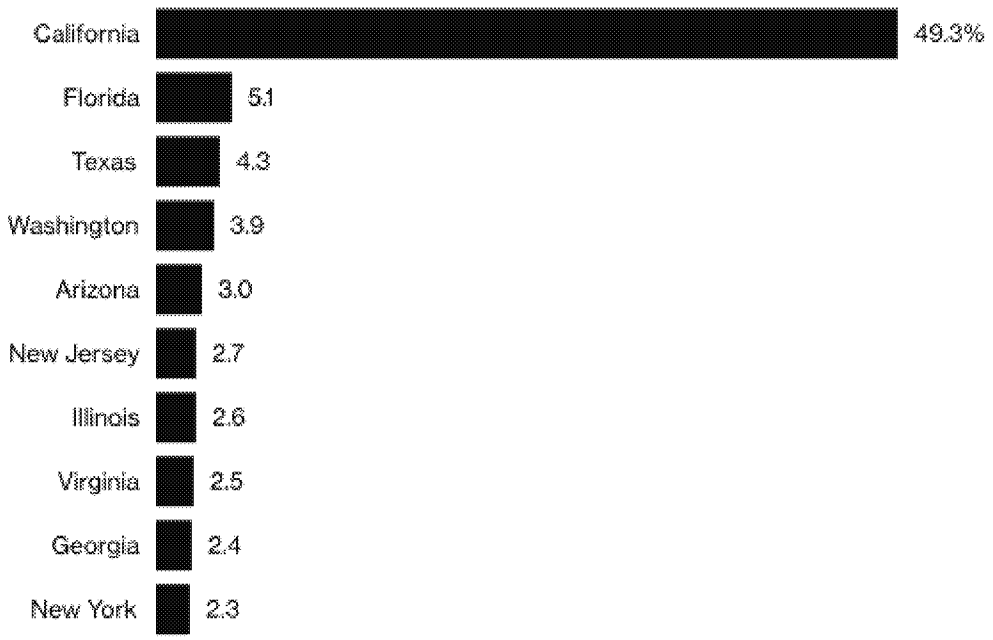
Hey Senator Grassley, Iowa farmers are subsidizing rich Californians. Still thinking about expanding the EV tax credit?

Bloomberg (1/16/19) reports: "Teslas Inc.'s home state of California accounted

for almost half of all Model 3 registrations through the first 10 months of 2018, a sign that the electric-car maker is wildly popular in the Golden State but not yet ubiquitous in other parts of the country. Through October 2018, the last month for which full data is available, California registered 39,606 Model 3 sedans, or 49.3 percent of all Model 3 registrations in the U.S., according to IHS Markit. Florida came in second with 4,064, or 5.1 percent. California is the most populous U.S. state with about 40 million residents, almost twice the size of Florida's population."

Where the Model 3s Are

Top Tesla States for Model 3 Registration



If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance

Myron Ebell, Competitive Enterprise Institute

Phil Kerpen, American Commitment

William O'Keefe, George C. Marshall Institute

Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity

Joe Bast, Heartland Institute

David Ridenour, National Center for Public Policy Research

Grover Norquist, Americans for Tax Reform

Sabrina Schaeffer, Independent Women's Forum

George Landrith, Frontiers of Freedom

Thomas A. Schatz, Citizens Against Government Waste

Richard Manning, Americans for Limited Government

Adam Brandon, FreedomWorks

Rich Collins, Positive Growth Alliance

Craig Richardson, E&E Legal

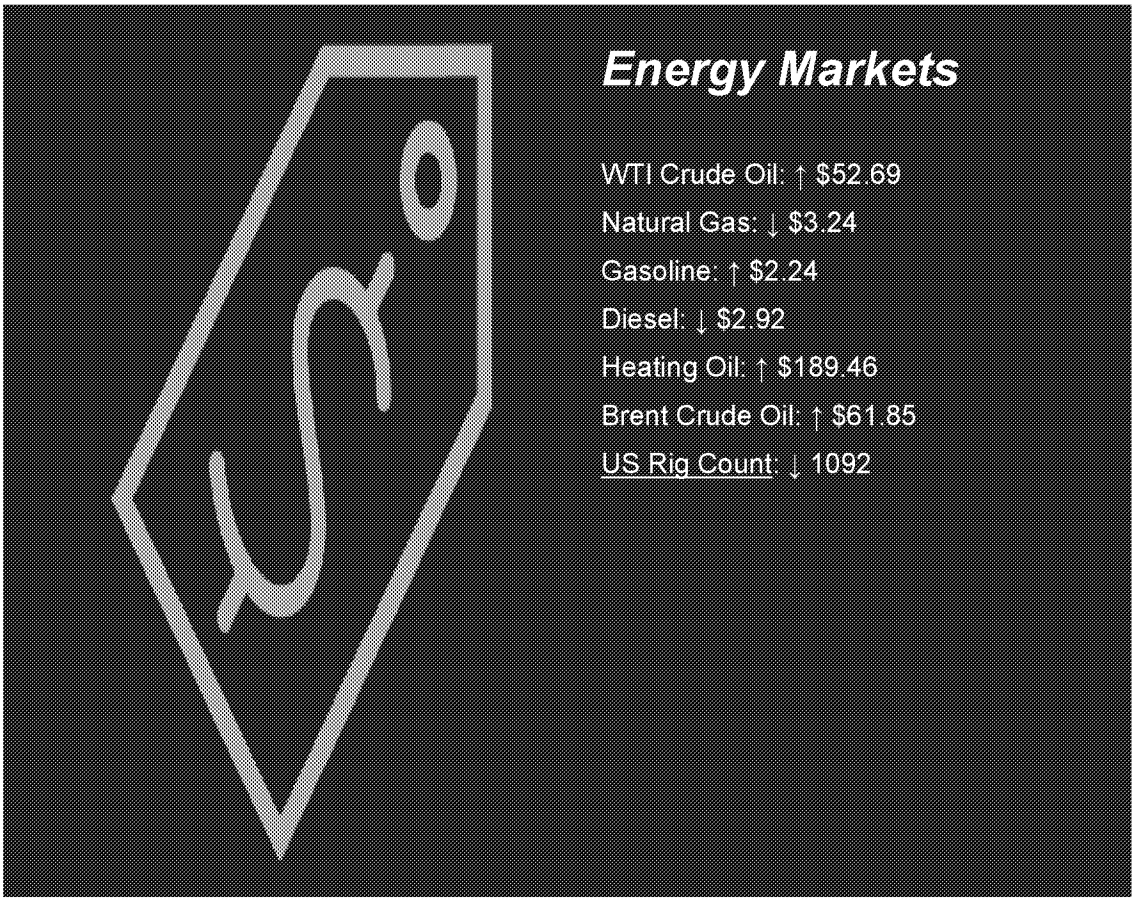
The Honorable George Allen, American Energy Freedom Center

Dick Patten, American Business Defense Council

Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute

Jack Ekstrom, PolicyWorks America



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Message

From: Koerber, Mike [Koerber.Mike@epa.gov]
Sent: 10/30/2018 3:46:03 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: FW: NY 126 Letters
Attachments: MOG Supplemental Comments on New York 126 Petition 10.19.18.pdf; ASC--Initial Comments to NY Petition--09-24-2018.pdf

Importance: High
Flag: Flag for follow up

Clint – For your awareness – see two recent letters concerning NY's petition:

- 10/19/18 letter from the Midwest Ozone Group addressed to Acting Administrator Wheeler
- 9/24/18 letter from the Air Stewardship Coalition addressed to Bill Wehrum and Matt Leopold

We intend to docket the comment letters and respond to the commenters with an email acknowledgment rather than a formal letter signed by an OAR official. When we receive the CMS controls, we propose to request closure of the entry by adding a date and stating the reason for the closure request is that we have entered the letter into the docket for the appropriate action. We have used this approach in the past, including as a response to a 5/31/18 comment letter from MOG to Administrator Pruitt, also related to the NY 126 petition.

Message

From: Ward, Hillary [Ward.Hillary@epa.gov]
Sent: 2/25/2019 6:03:39 PM
To: OAR Briefings [OAR_Briefings@epa.gov]
CC: McKinney, Voronina [mckinney.voronina@epa.gov]; Koerber, Mike [Koerber.Mike@epa.gov]
Subject: Materials: Benefits Discussion, PM NAAQS Review Discussion, Fugitive Emission Rule
Attachments: Fugitives options briefing paper 022619.docx; PM2.5 health evidence to inform policy - part 1 022619FINAL.pptx; Wehrum benefits briefing ACE Final 022619.pptx

Hello,

Please see the attached materials for the following meetings.

2/26/19, 10:00 AM to 11:00 AM, Benefits Discussion with HEID
2/26/19, 11:15 AM to 12:15 PM, PM NAAQS Review Discussion
2/26/19, 3:45 PM to 4:45 PM, Fugitive Emissions Rule Consideration

Please let me know if you have questions.

Hillary Ward
USEPA, Office of Air Quality Planning and Standards
(919)541-3154

Message

From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 5/17/2019 1:40:35 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Because scientific ethics are a bourgeois construct.

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In the Pipeline

MORNING ENERGY NEWS | 5.17.2019

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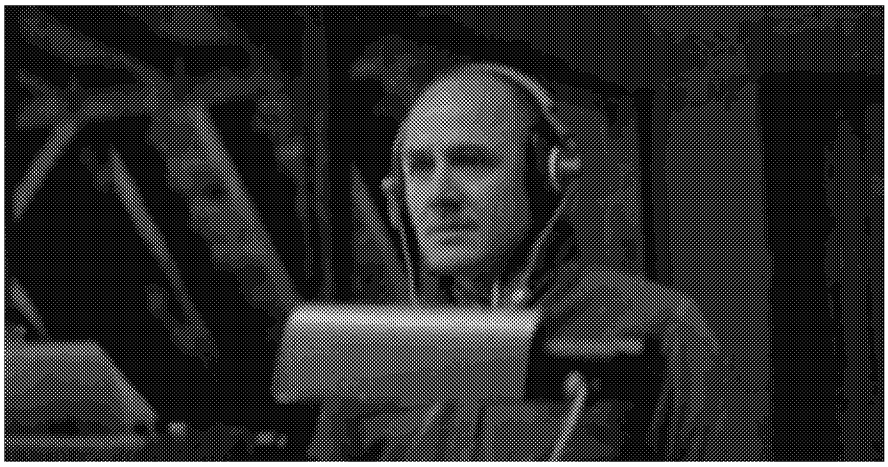
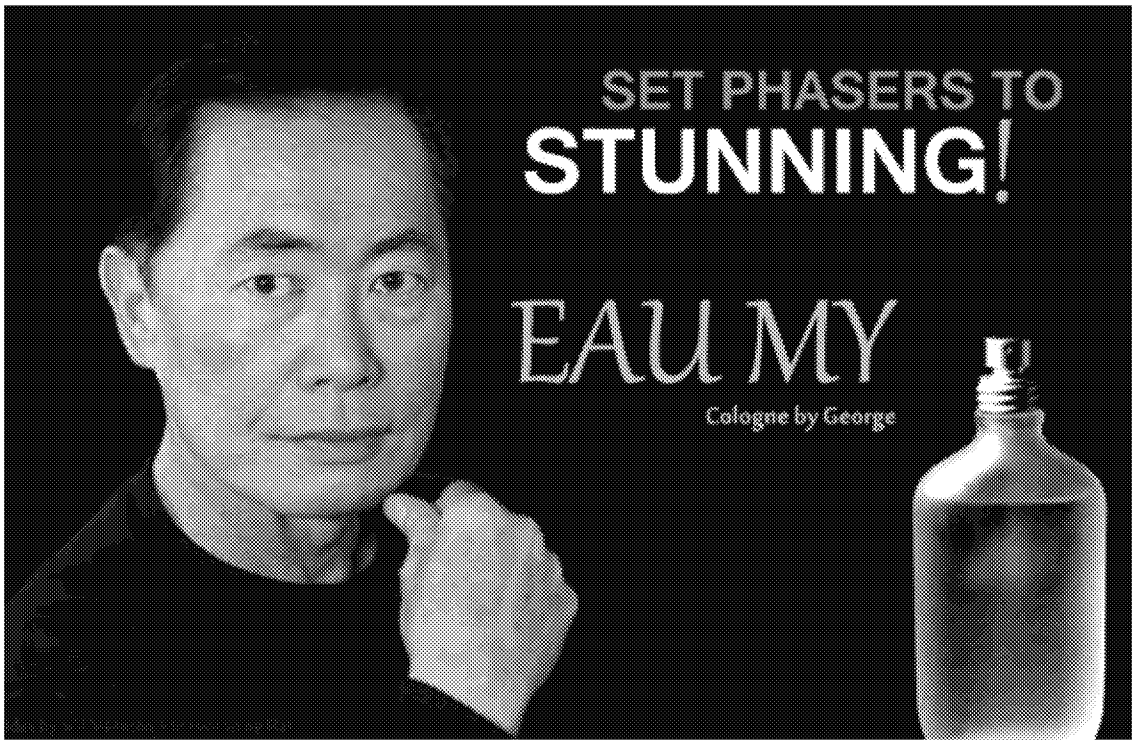
Wasn't this a favored practice of the Stasi?

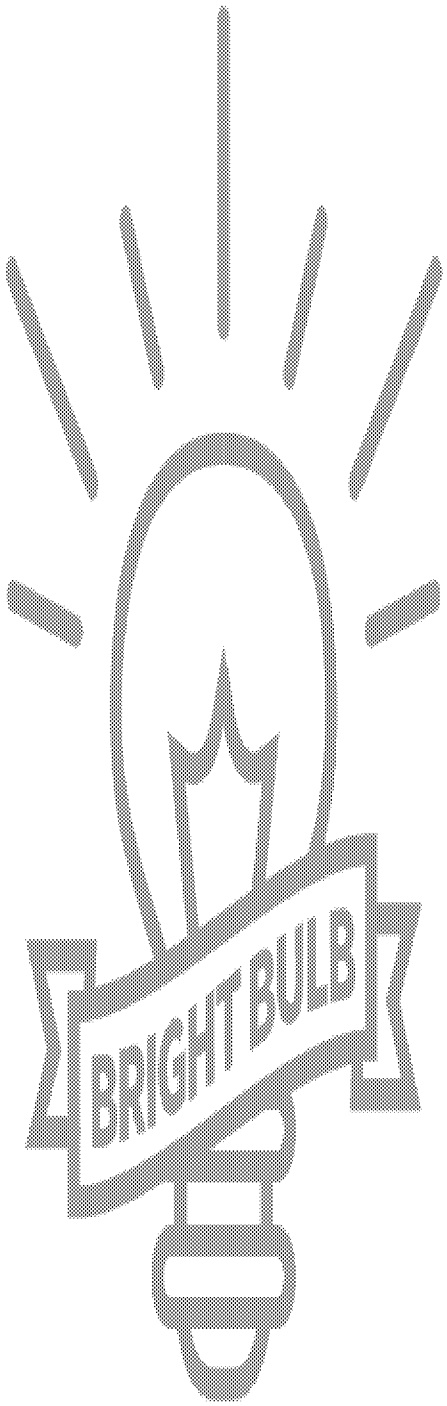
Nature (5/6/19) study: "The collective action that is required to mitigate and adapt to climate change is extremely difficult to achieve, largely due to socio-ideological biases that perpetuate polarization over climate change. Because climate change perceptions in children seem less susceptible to the influence of worldview or political context, it may be possible for them to inspire adults towards higher levels of climate concern, and in turn, collective action. Child-to-parent intergenerational learning—that is, the transfer of knowledge, attitudes or behaviours from children to parents — may be a promising pathway to overcoming socio-ideological barriers to climate concern. Here we present an experimental evaluation of an educational intervention designed to build climate change concern among parents indirectly through their middle school-aged children in North Carolina, USA."



Eau my.

Heartland Institute (5/15/19) blog: "A professor and group of student researchers at the University of Wisconsin at Eau Claire claim they found elevated particulate levels associated with frac-sand mining. Although their studies didn't conclude the levels are dangerous, professor Crispin Pierce has irresponsibly asserted that the levels will decrease life expectancy, leading some Wisconsinites to believe sand mining operations are a danger to the public...It is true that regular and sustained breathing of particulate matter at *certain levels of concentration* is dangerous. However, like always, it's the amount inhaled that becomes a problem. I'll say it again, because it's something that we often miss when it comes to toxicology and pollution: The amount of exposure changes the level of danger...Pierce admitted that the levels of particulates found were not alarming, even as he made his other claims about life expectancy."


SET PHASERS TO
STUNNING!
EAU MY
Cologne by George



"If progress is to continue, it is vital that people throughout the world, including socialists in America, better understand the vast extent of the improvements in human well-being over the last two centuries and the reasons for those improvements."

– Marian Tupy, Cato Institute

You're concerned about "social justice"? Well, concern yourself with this.

Inside Sources (5/16/19) op-ed: "According to a September 19 study by the U.S. Energy Information Administration, one in five American households goes without food or medicine at least once a year to stay warm in the winter or cool in the summer. Seven million households face this decision nearly every month. The elephant in the room is high-priced renewable power...(D)espite large federal and state subsidies, renewable power, not including long-established hydro-power, today accounts for just 10 percent of America's electricity generation. In many places, wind and solar simply cannot survive without vast direct and indirect subsidies paid for by energy consumers and taxpayers."

Mary, Mary why ya buggin?

Bloomberg (5/16/19) reports: "A top California environmental regulator is threatening to enact tough new pollution rules — including an unprecedented ban on cars burning petroleum-based fuels — in response to a Trump administration plan to relax vehicle emission standards. California Air Resources Board Chairwoman Mary Nichols said the state would have to pursue 'extreme' requirements to offset the uptick in pollution that would be unleashed if federal vehicle emission and fuel economy standards are weakened...Critics said California was making a last-ditch effort to revive the Obama vehicle requirements, even as the Trump administration finalizes its changes. 'With the release of the final rule just around the corner, Mary Nichols is ratcheting up her rhetoric in the hopes that the auto companies will put increased pressure on President Trump to back down,' said Tom Pyle, president of the American Energy Alliance, a free-market advocacy group. 'He shouldn't be deterred by it. California is clearly worried about how they will fare in a lawsuit against the Trump administration.'"

Here comes the accounting sleight of hand.

Houston Chronicle (5/15/19) reports: "Wind developers are rushing to launch new projects before federal subsidies expire. The Department of Energy predicted that new U.S. wind capacity will total 12.7 gigawatts this year, more than was added each year during the past six years, but not quite reaching the

record 13.3 gigawatts of new capacity set in 2012, the last time subsidies for wind projects were on the chopping block. Wind producers are eligible for a production tax credit that provides up to 2.3 cents per kilowatt hour of power for 10 years. The tax credit was scheduled to expire in 2012 but was renewed. Wind facilities that begin construction after Dec. 31 are not eligible for receive the credit."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance
Myron Ebell, Competitive Enterprise Institute
Phil Kerpen, American Commitment
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Grover Norquist, Americans for Tax Reform
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Craig Richardson, E&E Legal
Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute
Jason Hayes, Mackinac Center
David Williams, Taxpayers Protection Alliance
Paul Gessing, Rio Grande Foundation
Seton Motley, Less Government
Nathan Nascimento, Freedom Partners Chamber of Commerce
Isaac Orr, Center of the American Experiment
David T. Stevenson, Caesar Rodney Institute
John Droz, Alliance for Wise Energy Decisions
Hon. Tim Huelskamp, Ph.D., The Heartland Institute
Mark Mathis, Clear Energy Alliance

Energy Markets

WTI Crude Oil: ↑ $63.59

Natural Gas: ↓ $2.63

Gasoline: $2.86

Diesel: $3.10

Heating Oil: ↑ $212.88

Brent Crude Oil: ↑ $73.15

US Rig Count: ↓ 1023

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Subject: Oh the sanctimony...

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In the Pipeline

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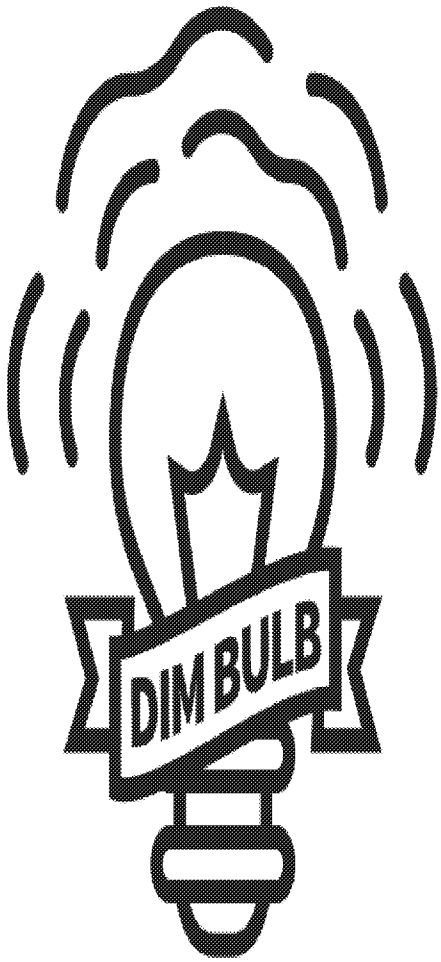
Let me get this straight, Emmanuel: If you're outside the Paris agreement but meeting your targets anyway, France won't trade with you. But, if you're in the agreement and not meeting your targets (aka most of Europe), let's talk mes amies.

Independent (9/25/18) reports: "Emmanuel Macron has announced France will no longer accept 'commercial agreements' with countries that do not 'respect' the Paris Climate Accord during a fiery speech at the United Nations General Assembly. The French president called for the upholding of trade rules that 'guarantee fair competition on equal footing' during his Tuesday speech, following a Monday afternoon meeting with Donald Trump and the US president's speech on Monday morning. Mr Macron appeared defiant towards Mr Trump, suggesting he'd no longer negotiate trade deals with the US after its

withdrawal from the climate agreement last year. 'We will no longer sign commercial agreements with powers that do not respect the Paris accord,' Mr Macron said without directly referencing Mr Trump or the US."



"There may be more electric vehicles on the world's roads, but there are also more internal combustion engines. There be more bicycles, but there are also more planes. It doesn't matter how many good things we do: preventing climate breakdown means ceasing to do bad things."

– George Monbiot, *The Guardian*

Big Green collusion.

Inside Sources (8/21/18) reports: "Newly-publicized documents show state and local governments who oppose Trump administration energy policy are using private money–including from sources abroad–to fund lawsuits here in the U.S. According to records obtained by the Competitive Enterprise Institute (CEI), major environmentalist groups pursuing lawsuits against Exxon Mobil and other oil companies received donations from foundations based in Europe. This includes legal action on behalf of local governments who are pursuing these cases. The paper, which as the result of years of research, documents 'an extensive and elaborate campaign using elective law enforcement offices, in coordination with major donors and activist pressure groups, to attain a policy agenda that failed through the democratic process.'"

Myth busting the Kigali Amendment.

CEI (9/25/18) commentary: "In 2016 in Kigali, Rwanda, the parties to the Montreal Protocol agreed to an amendment to the treaty, known as the Kigali Amendment, restricting production of these second-generation refrigerants. U.S. ratification of the Kigali Amendment requires a two-thirds Senate vote. The Kigali Amendment would raise the cost of air conditioning and refrigeration

across the board. Some manufacturers of Kigali-compliant refrigerants and equipment stand to benefit from the amendment. They have joined forces with environmental activists to lobby for the Kigali Amendment's ratification. In doing so, they have made a number of claims that do not stand up to scrutiny."

Rent-seekers gonna rent-seek.

Washington Examiner (8/26/18) reports: "A special commission chaired by the utility industry and automakers launched a national campaign on Wednesday to push the federal government and states to adopt more efficient vehicle technologies, while the Trump administration looks to roll back regulations that would do just that. The nonpartisan Alliance to Save Energy's 50x50 Commission on U.S. Transportation Sector Efficiency, which includes a broad coalition of industry, state regulators, and environmental groups, released a set of recommendations in a report, calling on policymakers 'to act urgently' to transform the transportation sector."

Energy Markets

WTI Crude Oil: ↓ $72.17

Natural Gas: ↓ $3.06

Gasoline: $2.86

Diesel: $3.18

Heating Oil: ↓ $230.40

Brent Crude Oil: ↓ $81.70

US Rig Count: ↑ 1154

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OFFICE OF THE ADMINISTRATOR
SCIENCE ADVISORY BOARD

June 28, 2018

EPA-SAB-18-003

The Honorable E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Subject: Science Advisory Board (SAB) Consideration of EPA Proposed Rule: Strengthening Transparency in Regulatory Science

Dear Administrator Pruitt:

As part of its statutory duties, the Environmental Protection Agency's (EPA) Science Advisory Board (SAB) met on May 31, 2018, to discuss whether to review the adequacy of the scientific and technical basis of the planned regulatory actions in the 2017 Unified Regulatory Agendas, as authorized by section (c) of the Environmental Research, Development and Demonstration Authorization Act of 1978 (ERDDAA). During this meeting, the SAB also discussed possible review of the science supporting the proposed rule *Strengthening Transparency in Regulatory Science (RIN 2080-AA14)*. The SAB found that the proposed rule deals with issues of scientific practice and proposes constraints to the use of scientific studies in particular contexts. The proposed rule solicits comment on a number of scientific issues that would benefit from expert advice and comment from the SAB.

Initiating the Screening Review

The ERDDAA requires the EPA to make available to the SAB proposed criteria documents, standards, limitations, or regulations provided to any other Federal agency for formal review and comment, together with the relevant scientific and technical information upon which the proposed action is based. The SAB may then make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis of the proposed action.

EPA's usual process is to provide the SAB with information about the publication of the semi-annual regulatory agenda and to provide descriptions of major planned actions that are not yet proposed but appear in the semi-annual regulatory agenda, augmented to include proposed regulations, criteria documents, standards, or limitations that are expected to undergo interagency review[1]. The EPA's descriptions provide available information regarding the science that is informing these agency actions.

SAB members and the SAB Staff Office were made aware of a proposed rule entitled *Strengthening Transparency in Regulatory Science* (RIN 2080-AA14) through an April 25, 2018, press event and an April 30, 2018, *Federal Register* notice, as well as news articles. The EPA announced the proposed rulemaking with a 30-day public comment period. SAB members had no information regarding the timeline for finalizing the rule and the proposed rule was not identified as a major action in either of the Spring 2017 or Fall 2017 semi-annual Regulatory Agendas.

An SAB Work Group met by teleconference on May 3, 2018, to discuss its recommendations on major planned actions in the Fall 2017 semi-annual regulatory agenda and included the proposed rule *Strengthening Transparency in Regulatory Science (RIN 2080-AA14)* as part of the discussion. That Work Group provided the SAB with a memorandum[2] documenting the discussions and recommending that the proposed rule merits review by the SAB. Subsequently the SAB became aware that the proposed rule was included in the Spring 2018 semi-annual Regulatory Agenda published on May 9, 2018. A second *Federal Register* notice was published May 25, 2018 extending the public comment period to August 16, 2018 and announcing a public hearing to be held in Washington, DC on July 17, 2018.

The SAB Should Consider the Proposed Rule's Scientific and Technical Basis

During the meeting on the May 31, 2018, the full SAB agreed with the Work Group that the proposed rule merits review by the Board and discussed the scientific issues that should be considered. For example, there are important scientific considerations needed for transparency. The Board recognizes that the long-term trend in most scientific fields is for authors to supply public access to data and analytic methods after scientific findings are published. Such transparency may help to ensure scientific integrity and facilitate robust analysis, as well as allowing supplementary lines of knowledge to be developed from the same data. Some fields of science are moving faster than others in the direction of transparency. For studies published many years ago, it may not be feasible to deliver public access to data and analytic methods.

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[1] EPA Memorandum: Coordination with the Science Advisory Board Regarding Proposed Criteria Documents, Standards, Limitations and Regulations. (See page 9 of Attachment A in the Fall 2017 memorandum available at: https://yosemite.epa.gov/sab/sabproduct.nsf//9263940BB05B89A885258291006AC017/$File/WG_Memo_Fall17_RegRevAttsABC.pdf)

[2] Preparations for Chartered Science Advisory Board (SAB) Discussions of Proposed Rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14) Available at: https://yosemite.epa.gov/sab/sabproduct.nsf//E21FFAE956B548258525828C00808BB7/$File/WkGrp_memo_2080-AA14_final_05132018.pdf

There are also sensitive situations where public access may infringe on legitimate confidentiality and privacy interests, and where exceptions from complete public access may be appropriate. In addition, there are considerations associated with the cost and effort that would be required in making large and complex existing datasets available within Institutional Review Board requirements, including the issue of who would be responsible for implementing the rule and any additional obligations. Thus, the development of guidelines and rules in this arena requires careful collaboration with the scientific community.

Although the proposed rule cites several valuable publications that support enhanced transparency, the precise design of the proposed rule appears to have been developed without a public process for soliciting input specifically from the scientific community. Nor does the preamble to the rule describe precisely how the proposal builds on previous efforts to promote transparency such as the Information Quality Act and EPA's Information Quality Guidelines.

Other key science issues associated with the proposed rule to increase transparency that may benefit from SAB advice are:

- Considerations related to the use of epidemiologic studies and methods that are based on confidential human subject data while also providing transparency in the underlying data;
- Consideration of the multiple existing methods to assess the validity of prior epidemiologic studies, that do not provide public access to data and analytic methods;
- Consideration of the selection of dose-response models and factors such as biological plausibility, mode of action, or mechanism of action to identify the most scientifically-appropriate model(s);
- The need to clearly define crucial sound science concepts such as "replication" and "validation"; and
- The identification and evaluation of mechanisms used by expert panels in vetting science that do not engage in reanalysis of original data with original methods, yet entail a rigorous review process that goes beyond typical journal peer review procedures.

The SAB recognizes that the EPA has already received thousands of public comments in addition to the large number of comments from grassroots write-in campaigns. The SAB urges the Agency to fully consider those comments and request, receive, and review scientific advice from the SAB before revising the proposed rule.

The EPA has long been a leader in the use of science in decision-making. The proposed rule, *Strengthening Transparency in Regulatory Science*, would focus on the EPA's foundational policies related to the use of science in rulemaking and policy development. Further, the rule has the potential to influence policy development and guidance across the government. The SAB looks forward to defining the set of scientific and technical issues upon which the proposed rule rests and developing a charge for an SAB work group to provide advice and comments on those issues.

On behalf of the SAB, I thank you for the opportunity to support EPA through consideration of the science supporting actions in the Agency's regulatory agenda.

Sincerely,

/s/

Dr. Michael Honeycutt, Chair
Science Advisory Board

Enclosure
(1) Roster of SAB Members

NOTICE

This report has been written as part of the activities of the EPA Science Advisory Board (SAB), a public advisory group providing extramural scientific information and advice to the Administrator and other officials of the Environmental Protection Agency. The SAB is structured to provide balanced, expert assessment of scientific matters related to problems facing the Agency. This report has not been reviewed for approval by the Agency and, hence, the contents of this report do not necessarily represent the views and policies of the Environmental Protection Agency, nor of other agencies in the Executive Branch of the Federal government, nor does mention of trade names of commercial products constitute a recommendation for use. Reports of the SAB are posted on the EPA Web site at http://www.epa.gov/sab

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Dr. Robert Puls, Owner/Principal, Robert Puls Environmental Consulting, Hilton Head Island, SC

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Mr. Thomas Carpenter, Designated Federal Officer, U.S. Environmental Protection Agency, Science Advisory Board Washington, DC

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[3] Dr. Ramos did not attend the May 31-June 1 meeting.

Message

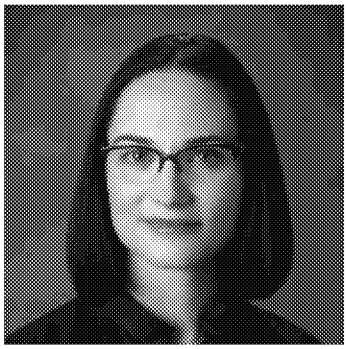
From: Dolley Madison [fedsoc@fed-soc.ccsend.com]
on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 10/30/2018 1:49:37 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Today at 12 p.m. ET: Courthouse Steps Teleforum Preview of Frank v. Gaos

October 30, 2018

Teleforum at 12 p.m. ET

Courthouse Steps Teleforum Preview: *Frank v. Gaos*

Litigation Practice Group
Tuesday, October 30, 2018 | 12:00 p.m. ET



Alida Kass
President
New Jersey Civil Justice Institute

What is the purpose of class actions? To provide compensation to class members? Or to provide compensation for attorneys? The Seventh Circuit has taken a skeptical view of settlements that provide fees for counsel but no meaningful benefit for the class. But there is a circuit split on the question, with the Ninth Circuit approving settlements that maximize attorney fees at the expense of the class, while funneling the class's compensation to organizations already supported by defendant contributions.

The U.S. Supreme Court granted cert in *Frank v. Gaos* to consider whether and in what circumstances cy pres is permitted in class action settlements.

Class counsel brought a putative class action against Google alleging Stored Communications Act violations entitling over 100 million class members to $1000/violation statutory damages. Before a motion to dismiss could be decided, the parties settled. Class counsel would receive over $2.1 million (over $1000/hour for every lawyer who worked on the case) and the class would receive nothing. The parties justified this settlement because of a provision providing for cy pres donations: about $5 million to five organizations that would use the money on Internet-related issues. At the fairness hearing, class member Ted Frank objected that the settlement unfairly benefited class counsel at the expense of the class, and objected that the cy pres money was going to organizations affiliated with Google or class counsel, such as Chicago-Kent Law School, the alma mater of one of the attorneys. The district court stated the cy pres did not pass the "smell test," but approved the settlement under Ninth Circuit precedent, and the Ninth Circuit affirmed.

Ted Frank, litigation director at the Competitive Enterprise Institute, argues that a settlement where attorneys receive millions and the class receives nothing by definition fails the Rule 23(e) requirement that settlements be "fair, reasonable,

and adequate." A bright line rule on "fairness" requiring that attorney fees be proportional to the direct recovery to the class would provide guidance to lower courts, align counsels' incentives with the class they represent, and reduce the incentive to bring low-value class actions that function as a mechanism to extract fees.

The New Jersey Civil Justice Institute filed an amicus brief in the case. Alida Kass, President and Chief Counsel of the Institute, will discuss the questions at issue in *Frank v. Gaos*. The argument is scheduled for October 31.

Dial 888-752-3232 to Participate

Speaker Biography

Alida Kass

Alida Kass is President of the New Jersey Civil Justice Institute. She leads the organization, and heads up its legislative and legal efforts.

Ms. Kass's approach to policy in the legislature focuses on incentives - finding and fixing the root cause of problems while avoiding unintended and adverse consequences of legislative policy choices.

Her leadership of the Institute's amicus program is similarly grounded in an appreciation for the incentive structures implicit in legal doctrine. The program operates as a strategic and forceful voice for the business community on legal policy.

Ms. Kass developed and runs the Institute's Continuing Legal Education (CLE) program, which includes panel discussions and symposiums on a variety of legal issues critical to New Jersey's business community and economic development climate, as well as teleforums on significant legal developments in New Jersey and around the country.

She is one of New Jersey's most knowledgeable and well-spoken experts on legal reform. Her writing has been published by the New Jersey Law Journal and the Federalist Society for Law and Public Policy Studies, and she is frequently quoted by the media.

Prior to joining the Institute, she taught as an adjunct professor at the Georgetown University Law Center. She also worked on Capitol Hill as a Legislative Assistant for Representative Christopher Cox, where she handled commercial and judicial issues.

Ms. Kass graduated from Duke University with a degree in history, and earned her J.D. from the Georgetown University Law Center. She resides in Chatham where she serves on the Borough's Zoning Board of Adjustment.

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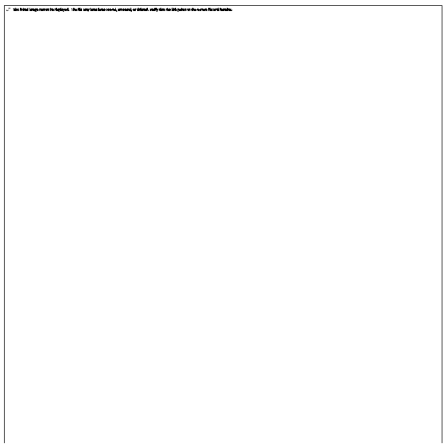
How much more of DeBlasio and the leftists on the City Council can NYC endure?

Huffington Post (4/11/19) reports: "New York City is gearing up to enact its own version of the Green New Deal with a suite of bills that aim to dramatically slash the city's planet-warming emissions, create thousands of blue-collar jobs and set the stage for future state and federal climate policies. The City Council on Thursday plans to announce the Climate Mobilization Act, a package that includes six pieces of legislation grouped in an omnibus bill to be voted on by Earth Day, April 22. It's the first of what's expected to be at least two waves of climate-focused legislation this year...The heart of the legislation is a measure requiring buildings of over 25,000 square feet — the biggest source of carbon pollution in the city — to install new windows, insulation and other retrofits to become more energy efficient. Starting in 2024, the legislation orders landlords to slash emissions 40% by 2030, and double the cuts by 2050. If passed, the bill would likely be the largest single legislative mandate to cut climate pollution by any city in the world."



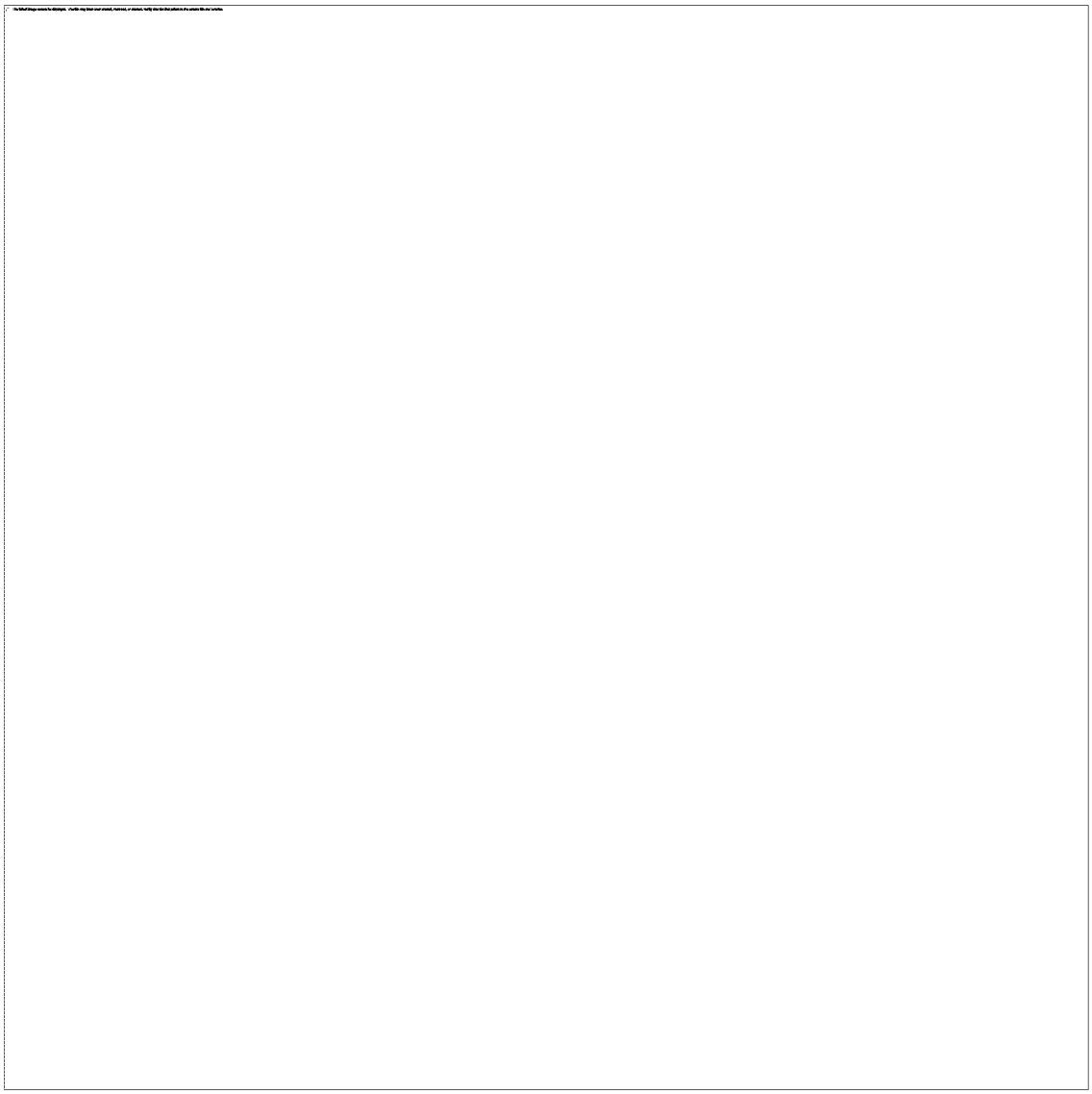
"Supposing the U.S. could go carbonless, the difference in atmospheric CO2 levels by 2100 would be only about 29 parts per million. Based on Intergovernmental Panel on Climate Change modeling, this would make no discernible difference in mean global temperature."

– Steve Milloy in the Wall Street Journal

Who is Alex Flint?

E&E News (4/12/19) reports: "Alex Flint sent the email at 5:24 p.m. on a Tuesday, but it had the tone of a middle-of-the-night manifesto. In it, the conservative climate activist attacked one of the biggest barriers to progress on

global warming — the continued denial of climate science by key voices on the right. And he didn't hold back...'Anyone who denies the risk of climate change is irresponsible,' wrote Flint, who serves as executive director of the Alliance for Market Solutions, a pro-carbon-tax group. 'And being irresponsible disqualifies anyone from being a true conservative.' It was a remarkable moment for Flint and his small advocacy shop, which is close to celebrating its two-year anniversary...Pyle declined an interview request through a spokeswoman, but he responded to Flint's email in a statement. 'I'm not hung up on labels, but it's sad that some people have to reduce themselves to bad-mouthing conservatives to promote irresponsible policies like a federal energy tax,' he said."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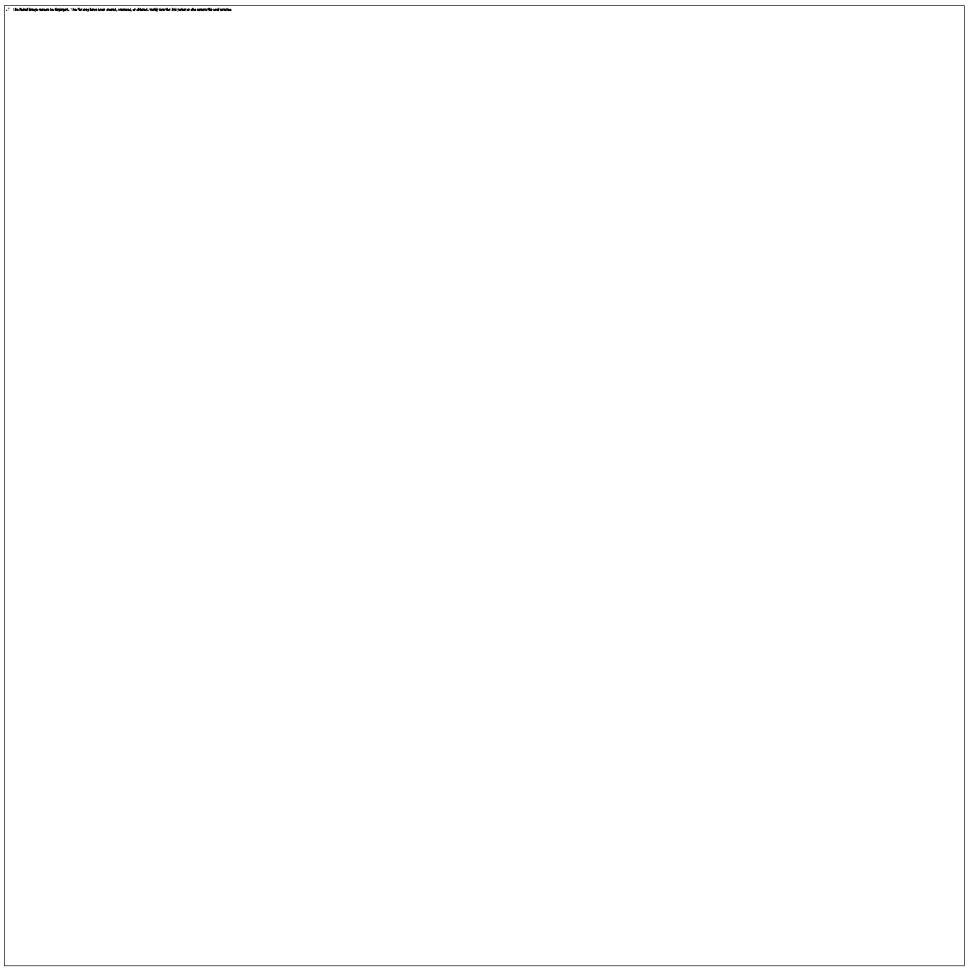
The proof is in the permitting pudding.

Reuters (4/12/19) reports: "President Donald Trump has made it a priority to speed permitting and reduce regulation as a way to boost production of oil, gas and coal from public lands - an agenda that has pleased the energy and mining industries but outraged environmentalists concerned about pollution and climate change. The Department of Interior's Bureau of Land Management approved 3,991 drilling permits in fiscal 2018, up from 2,887 in 2017, the agency said, an increase of 38 percent. The average time to process an application to drill with BLM was cut nearly in half to 63 days from 120 days in 2017."



Joe unloads.

Daily Caller (4/11/19) reports: "Democratic West Virginia Sen. Joe Manchin

closed out a Capitol Hill hearing by chastising fellow Democrats for backing climate change policies that make energy more expensive for poor families that can least afford it. 'We're still producing 91 percent of our power from coal-fired units,' Manchin said at a Thursday Senate hearing on energy innovation and climate change. 'Nothing has changed except the price has gone up for some of the most challenged incomes of people anywhere...They get beat-up unmercifully, and all we have done is drive the price of coal-fired plants to the point to try and make our renewables look more competitive,' said Manchin, the ranking Democrat on the Senate Committee on Energy and Natural Resources. 'It's just a tremendous hardship.'"

The elixir of life.

Yahoo (4/12/19) reports: "Immersed up to her neck in a dark viscous liquid, Sulfiya smiles in delight, confident that the fetid substance will cure her painful condition. Sulfiya, a Russian woman in her 60s, has travelled to Azerbaijan's north-western city of Naftalan in the hope that crude oil baths at a local sanatorium will end her years of suffering from polyarthritis, a disease affecting the joints. 'This is so pleasant,' she enthuses, despite the reek of engine oil."

Energy Markets

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Gasoline: $2.83
Diesel: $3.07
Heating Oil: ↓ $205.27
Brent Crude Oil: ↓ $70.98
US Rig Count: ↓ 1053

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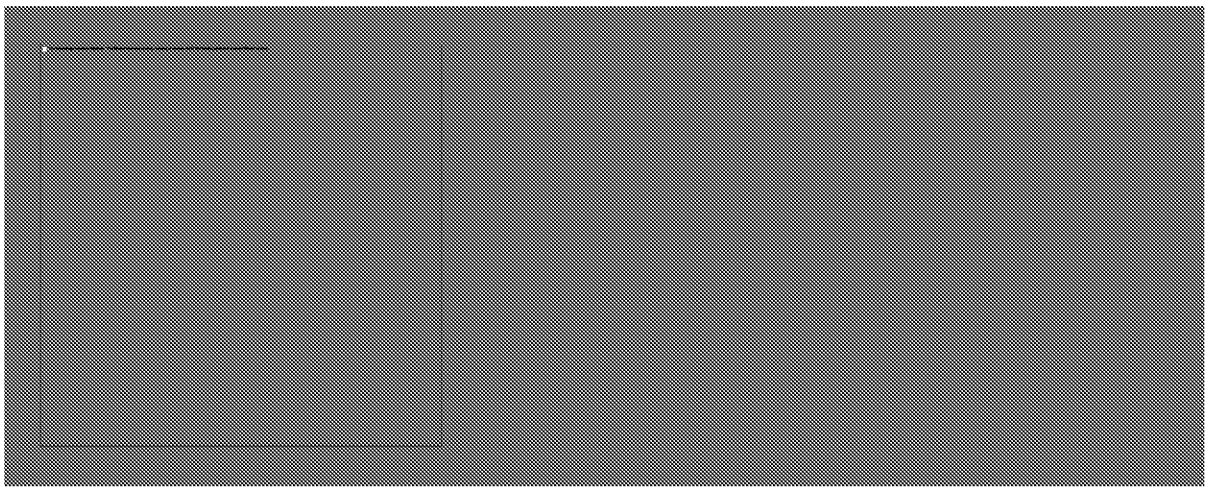
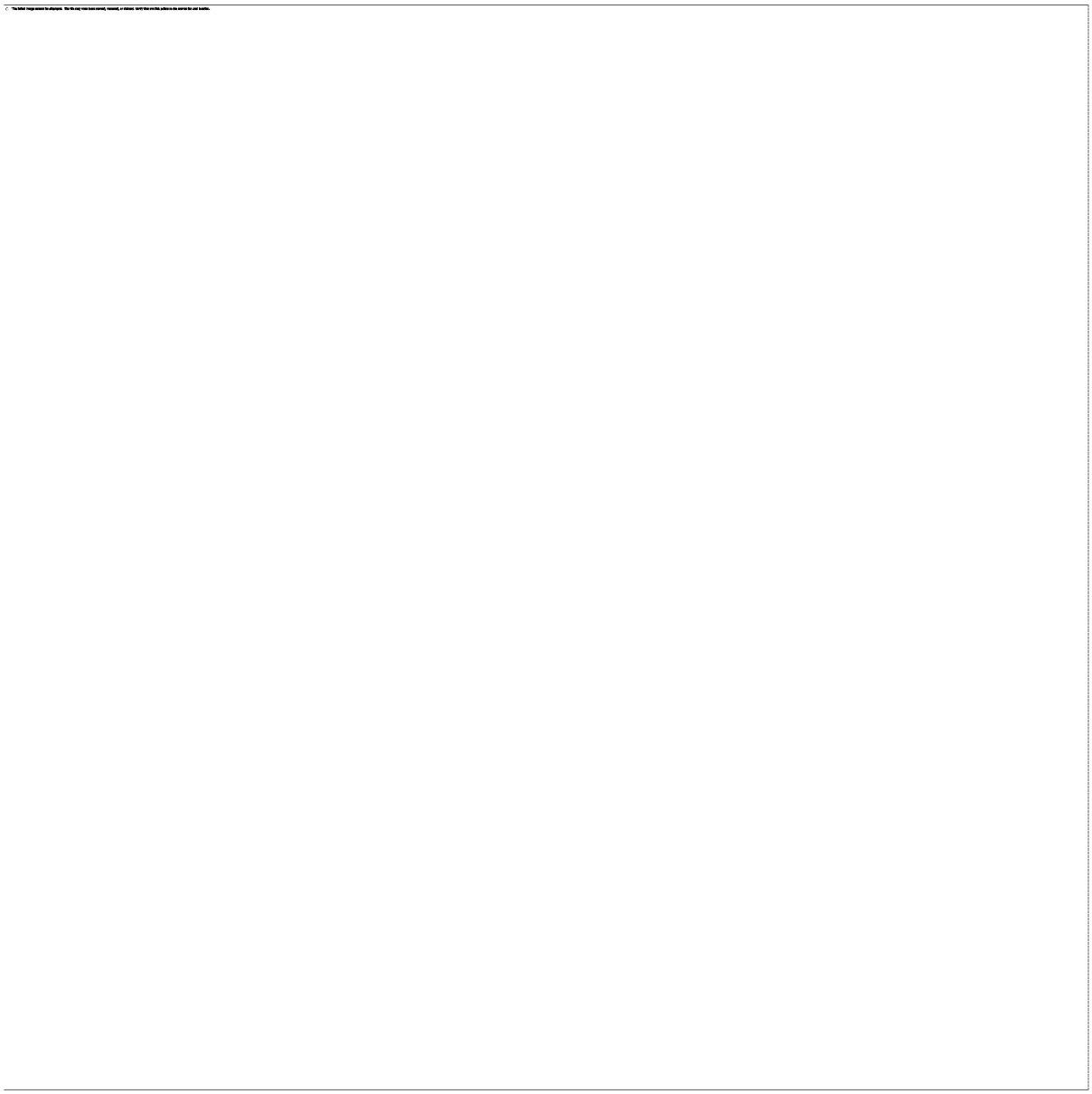
From: Institute for Energy Research [info@ierdc.org]
Sent: 10/4/2018 7:21:24 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Following the money behind "eco-conservatives"





SURGING

The Daily Caller recently highlighted research from IER's Big Green, Inc. database to expose how wealthy left-leaning foundations spent $10 million on an effort that included handing money to conservative and libertarian think

tanks and grassroots organizations to promote their climate views.

IER president Thomas J Pyle added:

"***Environmental foundations have funded faux-conservative groups for many years*** to make it seem like their radical climate ideology has a broader consensus than it really does. ***If you see so-called conservative or free market groups pushing for policies that are anti-free market, follow the money,*** odds are left-leaning environmental foundations are supporting it."

Read the full story here and explore the full Big Green, Inc. database here.

FROM THE STUDIO

Paul Driessen on the looming corporate scandal at Bloom Energy

We sit down with Paul Driessen, a senior policy advisor with the Center For A Constructive Tomorrow (CFACT) and with Defense of Free Enterprise, to discuss the impending corporate scandal surrounding Bloom Energy. Don't miss *Plugged In* episode #5: Paul Driessen on the looming corporate scandal at Bloom Energy

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- Wind Gives Way to Solar Power and Natural Gas After Federal Subsidies End
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- Big Green Carpet Bagging: Environmental Foundations' Out-of-State Spending

THE WIRE

IER News Highlights

THE BUZZ

IER on Social Media

- IER President Tom Pyle quoted in The Hill on electric vehicle tax credits
- IER's Robert Bradley quoted by the Heartland Institute on "green-socialism"

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- Over 200 interactions on Tweets
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THE BREAKER

"[America is] now the single largest producer of oil and gas anywhere in the world.... Think of it: We're the single-largest producer of energy in the world. Did you ever think you were going to hear that? This all happened very quickly." – President Donald J. Trump

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From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 4/12/2019 1:56:19 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Amazon Primordial

View this email in your browser

In the Pipeline

MORNING ENERGY NEWS | 4.12.2019

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Employees to Bezos: take us back to the jungle!

Medium (4/10/19) open letter: "We, the undersigned 5,237 Amazon employees, ask that you adopt the climate plan shareholder resolution and release a company-wide climate plan that incorporates the principles outlined in this letter...Climate change is an existential threat...Our customer obsession requires climate obsession. This necessitates an immediate company-wide plan addressing climate change that demonstrates the following principles: (1) Public goals and timelines consistent with science and the IPCC report. Emissions must be cut in half by 2030 from 2010 levels and reach zero by 2050. Goals must span all organizations and businesses, and cover the full supply chain. (2) A complete transition away from fossil fuels rather than relying on carbon offsets. (3) Prioritization of climate impact when making business decisions."

Bezos to employees: the future awaits.

Gizmodo (4/8/19) reports: "In 2014, Amazon announced that it would power its rapidly expanding fleet of data centers with 100 percent renewable energy. Apple, Facebook, and Google made similar pledges two years before that, and pressure from consumers and environmental groups drove Amazon to follow suit. For the next two years, the tech giant made admirable strides toward achieving its goal, bankrolling large solar plants and wind farms. Then, it stopped. Amazon hasn't announced any new deals to supply clean energy to its data centers since 2016, and it quietly abandoned plans for one of its last scheduled wind farms last year. Meanwhile, in 2017, according to internal company documents viewed by Gizmodo, Amazon undertook a concerted push to win over a new industry, perhaps best summed up by the name of a presentation at Amazon Web Services' annual company Sales Kick-Off event that February: 'Positioning for Success in Oil & Gas.'"

"We've got to go straight to the heart of capitalism and overthrow it."

– George Monbiot, The Guardian

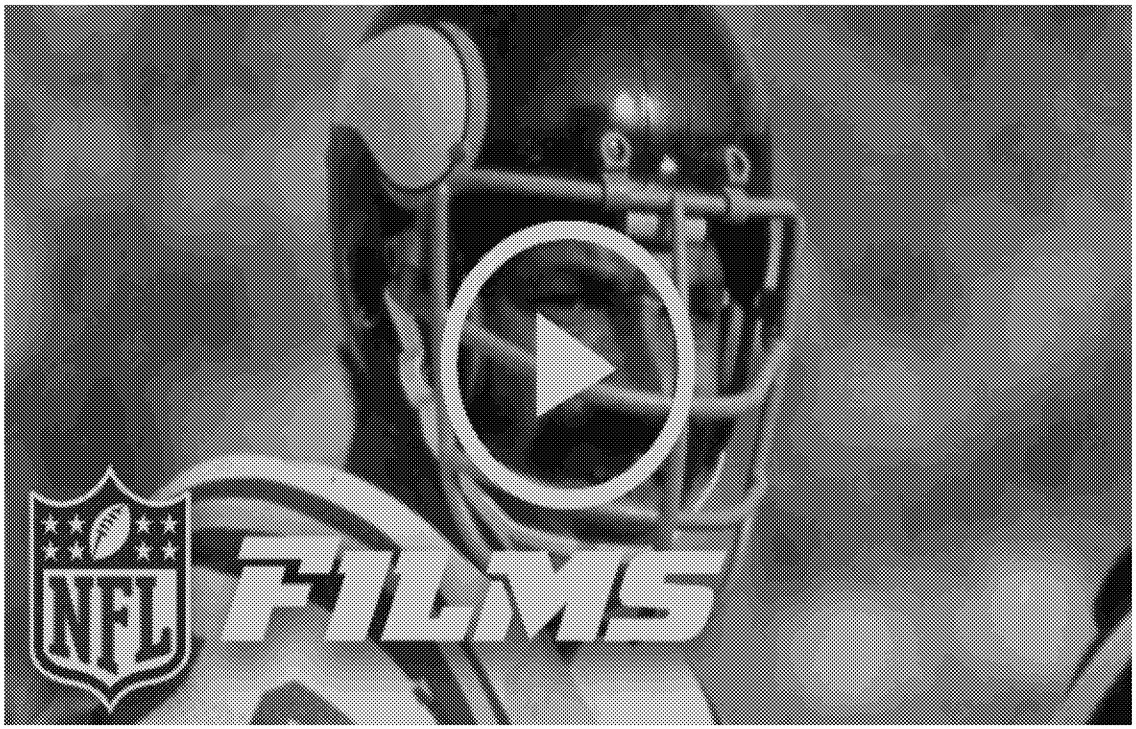
Big Green, Inc.

Daily Signal (4/11/19) reports: '"Sunrise hopes the media falls for its image of itself as a youth-led grassroots activism for the Green New Deal, springing up naturally,' Scott Walter, president of Capital Research Center, told The Daily Signal. 'In fact, the group is a creature of the professional left.'...For starters, Influence Watch notes, Sunrise Movement Education Fund shares the same street address in Washington as the U.S. Climate Action Network. Public records show the network itself is backed by some of the wealthiest left-leaning foundations, including the Sea Change Foundation, the Energy Foundation, Kendeda Fund, Rockefeller Brothers Fund, Tides Foundation, and Oxfam America."

Keeping Minnesota's "Wrong Way" heritage alive.

Duluth News-Tribune (4/10/19) op-ed: "Speaking as the leading advocate for energy consumers in Minnesota, I can say that clean energy is the best option if we want to keep our energy bills low. Anyone claiming that transitioning to clean energy will raise utility bills for Minnesotans has not been reading the news. Simply put, renewable energy is the lowest-cost energy resource in

Minnesota today. Wind energy, even without subsidies, is now cheaper than coal and natural gas. The cost of wind and solar energy fell 16 percent and 23 percent respectively last year, and costs are still decreasing. Clean energy is so cheap that utilities can build new wind turbines for less than it costs to simply operate existing coal power plants. That means that if we continue to rely on traditional power generation, we'll pay too much...There's no doubt the electric system can accommodate much higher levels of renewables than are on the system today."



Come on, Coral. I know you have to cater to your audience, but seriously?

New York Times (4/10/19) reports: "As the Trump administration prepares to drastically weaken Obama-era rules restricting vehicle pollution, nervous automakers are devising a strategy to handle their worst-case scenario: a divided American auto market, with some states following President Trump's weakened rules while others stick with the tougher ones.The effort is increasingly urgent because the Trump administration has now settled on the key details of its rollback plan, according to two people familiar with the matter. The new rules would all but eliminate the Obama-era restrictions, essentially freezing standards at about 37 miles per gallon, compared to 54.5 miles per gallon required by the current rules. The policy makes it a near-certainty that California and 13 other states, collectively representing roughly one-third of the United States auto market, will keep enforcing the stricter rules, splitting the national auto market in two."

If only there were a logical, self-contained alternative...

Bloomberg (4/11/19) reports: "President Donald Trump wants to allow natural gas to be shipped in railroad cars, a move that would open new markets hungry for the fuel but could risk catastrophic accidents if one were to derail.Trump on

Wednesday ordered the Transportation Department to write a new rule permitting super-chilled natural gas to be shipped in tank cars. The order follows a multiyear lobbying campaign by railroads and natural gas advocates, who argue it is needed to serve customers in the U.S. Northeast, where there aren't enough pipelines, while also making it possible to use the gas to power ships and trains."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance
Myron Ebell, Competitive Enterprise Institute
Phil Kerpen, American Commitment
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Grover Norquist, Americans for Tax Reform
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Craig Richardson, E&E Legal
Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute
Jason Hayes, Mackinac Center
David Williams, Taxpayers Protection Alliance
Paul Gessing, Rio Grande Foundation
Seton Motley, Less Government
Nathan Nascimento, Freedom Partners Chamber of Commerce
Isaac Orr, Center of the American Experiment
David T. Stevenson, Caesar Rodney Institute
John Droz, Alliance for Wise Energy Decisions
Hon. Tim Huelskamp, Ph.D., The Heartland Institute
Mark Mathis, Clear Energy Alliance

Energy Markets

WTI Crude Oil: ↑ $64.45
Natural Gas: ↑ $2.68
Gasoline: ↑ $2.81
Diesel: ↑ $3.06
Heating Oil: ↑ $208.33
Brent Crude Oil: ↑ $71.61
US Rig Count: ↑ 1054

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From: Dolley Madison [fedsoc@fed-soc.ccsend.com]
on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 5/15/2019 3:48:20 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Starting Now: Executive Privilege and Congressional Oversight

May 15, 2019

Teleforum Starting NOW

Executive Privilege and Congressional Oversight

Federalism & Separation of Powers Practice Group

Wednesday, May 15, 2019 | 12:00 p.m. ET

John G. Malcolm
Vice President
Institute for Constitutional Government
Director

Prof. John C. Yoo
Emanuel S. Heller Professor of Law
University of California at Berkeley School of Law

Meese Center for Legal & Judicial Studies
and Senior Legal Fellow
The Heritage Foundation

What is the proper balance between Congressional oversight and Executive privilege? As it becomes clear that Congress is not satisfied with the Mueller Report on its face, and it will seek to conduct follow-up inquiries on its own, it has requested an unredacted copy of the Mueller Report, and its supporting documentation, and several witnesses who were interviewed during the investigation, including the former White House Counsel. Historically, Congress and the Executive have resolved their differences on disclosure requirements and moved forward, without significant resort to the Judiciary. What will and should be the role of the courts in any upcoming litigation? Could a final court ruling enhance rather than limit the power of the Executive? These and other questions will be discussed by our experts.

Speaker Biographies

John G. Malcolm

John G. Malcolm oversees The Heritage Foundation's work to increase understanding of the Constitution and the rule of law as director of the think tank's Edwin Meese III Center for Legal and Judicial Studies. Mr. Malcolm, who also is Heritage's Ed Gilbertson and Sherry Lindberg Gilbertson senior legal fellow, brings to the challenge a wealth of legal expertise and experience in both the public and private sectors.

Before being named director of the Meese Center in July 2013, Mr. Malcolm spearheaded the center's rule of law programs. His research and writing as senior legal fellow focused on criminal law, immigration, national security, religious liberty and intellectual property. The Meese Center works to educate government officials, the media and the public about the Constitution and legal principles -- and how they affect public policy. The center was

founded in 2001 and overseen until early 2013 by the conservative icon whose name it bears, former Attorney General Edwin Meese III.

In addition to his duties at Heritage, Mr. Malcolm is chairman of the Criminal Law Practice Group of the Federalist Society and chairman of the board of directors for Boys Town Washington, D.C., which provides homes and services to troubled children and families who are edging toward crisis.

Before joining Heritage in 2012, Mr. Malcolm was general counsel at the U.S. Commission on International Religious Freedom as well as a distinguished practitioner in residence at Pepperdine Law School. An independent and bipartisan panel, USCIRF reviews reported violations of religious freedom around the world and makes policy recommendations to the president, the secretary of state and Congress.

From 2004 to 2009, Mr. Malcolm was executive vice president and director of worldwide anti-piracy operations for the Motion Picture Association of America. He served as a deputy assistant attorney general in the Department of Justice's Criminal Division from 2001 to 2004, where he oversaw sections on computer crime and intellectual property, domestic security, child exploitation and obscenity, and special investigations. Immediately prior to that, he was a partner in the Atlanta law firm of Malcolm & Schroeder, LLP.

From 1990 to 1997, Mr. Malcolm was an assistant U.S. attorney in Atlanta, assigned to the fraud and public corruption section, and also an associate independent counsel, investigating fraud and abuse in the Department of Housing and Urban Development. He was honored with the Director's Award for Superior Performance for his work as an assistant U.S. attorney in the successful prosecution of Walter Leroy Moody Jr., who assassinated an 11th Circuit judge and the head of the Savannah chapter of the NAACP.

Mr. Malcolm began his law career as a law clerk to a federal district court judge and a federal appellate court judge as well as an associate at the Atlanta-based law firm of Sutherland, Asbill & Brennan. He is a graduate of Harvard Law School and holds a bachelor's degree in economics from Columbia College.

Prof. John C. Yoo

John Yoo is the Emanuel Heller Professor of Law at the University of California at Berkeley and a Visiting Scholar at the American Enterprise Institute. His latest book, *Striking Power: How Cyber, Robots, and Space Weapons Change the Rules for War*, was published in September 2017.

His other books include *Point of Attack* (Oxford UP 2014); *Taming Globalization* (Oxford UP 2012), *Confronting Terror* (Encounter 2011); *Crisis and Command* (Kaplan 2010); *War by Other Means* (Grove/Atlantic 2006); and *The Powers of War and Peace* (Chicago UP 2005). In 2014, Professor Yoo co-founded the Korea Law Center, the nation's leading center for the study of U.S.-Korean legal issues, and he directs Berkeley's Public Law and Policy program.

Professor Yoo has published numerous articles in the United States' top law journals. He also regularly contributes to the editorial pages of *The Wall Street Journal, New York Times, Washington Post, Los Angeles Times, National Review*, and *The Weekly Standard*, among others. He has also been a columnist for his hometown newspaper, *The Philadelphia Inquirer*.

Professor Yoo has served in all three branches of government. He was an official in the Office of Legal Counsel of the U.S. Department of Justice, where he worked on national security and terrorism issues after the September 11 attacks. He served as general counsel of the U.S. Senate Judiciary Committee under Chairman Orrin Hatch of Utah. He has been a law clerk for Justice Clarence Thomas of the U.S. Supreme Court and Judge Laurence Silberman of the U.S. Court of Appeals in Washington, DC. He has been a visiting professor at Seoul National University, Trento University, University of Chicago, and the Free University of Amsterdam.

Professor Yoo graduated from Yale Law School, where he was an articles editor of the *Yale Law Journal*, and summa cum laude from Harvard College with a degree in American history.

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From: Dominguez, Alexander [dominguez.alexander@epa.gov]
Sent: 2/26/2019 2:45:31 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: FW: Materials: Benefits Discussion, PM NAAQS Review Discussion, Fugitive Emission Rule
Attachments: Fugitives options briefing paper 022619.docx; PM2.5 health evidence to inform policy - part 1 022619FINAL.pptx; Wehrum benefits briefing ACE Final 022619.pptx

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From: Ward, Hillary
Sent: Monday, February 25, 2019 1:04 PM
To: OAR Briefings <OAR_Briefings@epa.gov>
Cc: McKinney, Voronina <mckinney.voronina@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: Materials: Benefits Discussion, PM NAAQS Review Discussion, Fugitive Emission Rule

Hello,

Please see the attached materials for the following meetings.

2/26/19, 10:00 AM to 11:00 AM, Benefits Discussion with HEID
2/26/19, 11:15 AM to 12:15 PM, PM NAAQS Review Discussion
2/26/19, 3:45 PM to 4:45 PM, Fugitive Emissions Rule Consideration

Please let me know if you have questions.

Hillary Ward
USEPA, Office of Air Quality Planning and Standards
(919)541-3154

Message

From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 2/25/2019 2:58:52 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: They said hydrocarbons were outdated. And they were wrong.

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MORNING ENERGY NEWS | 2.25.2019

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This party's just getting started.

Reuters (2/22/19) reports: "Exxon Mobil Corp and Microsoft Corp have agreed to use cloud technology in the U.S. oil producer's shale operations, they said on Friday, helping to boost profitability in the nation's largest shale field. The companies will collect data from Exxon's wells and other production assets in the Permian Basin of West Texas and New Mexico, where the world's largest publicly traded oil and gas company holds 1.6 million acres, and make it immediately accessible to Exxon workers...Exxon has pledged to increase its Permian Basin production to 600,000 barrels of oil equivalent per day (boepd) by 2025. The company's fourth-quarter Permian production was 190,000 barrels of oil and gas per day."

"40 percent of the nation's wealth and economic output was shifted to the war effort...And, of course, Wold War II was a relatively small mobilization compared to what we find in the Green New Deal. World War II only lasted four years for the United States; this is forever and it's a huge takeover by the federal government of the economy and of people's lives."

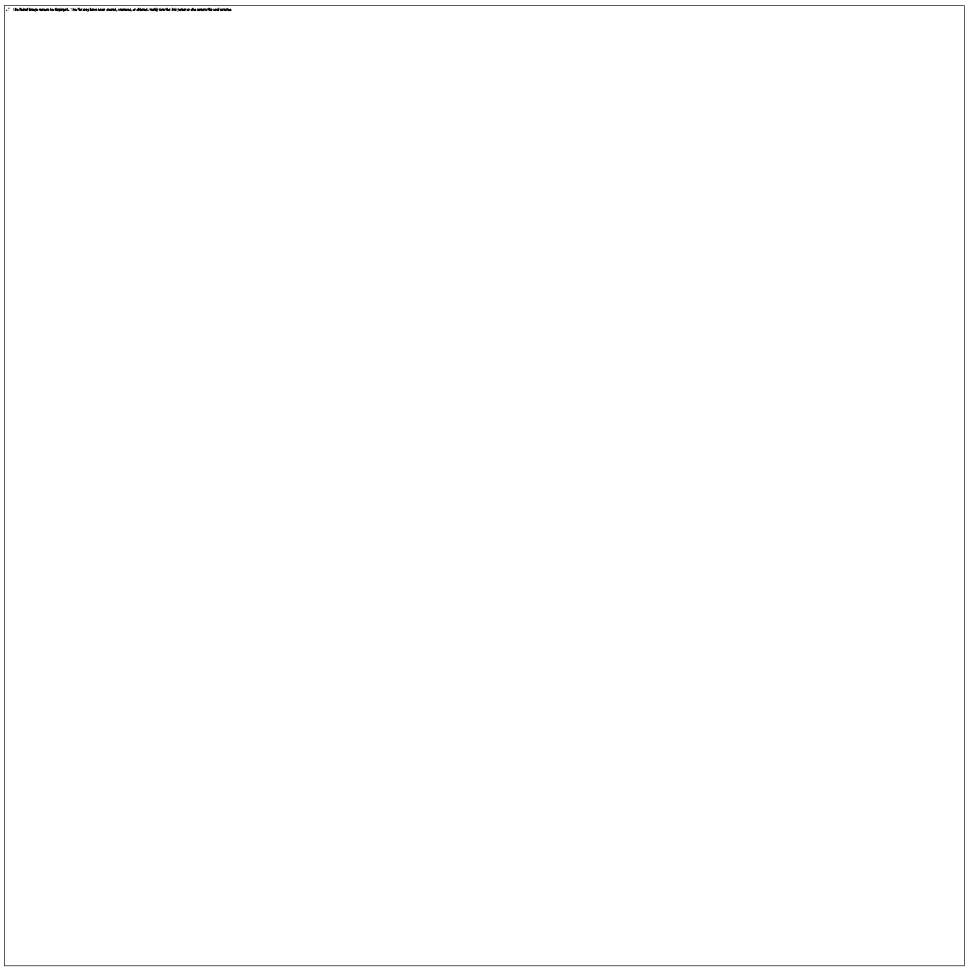
– Myron Ebell, Competitive Enterprise Institute

Both the writer and the subject are begging for the People's Elbow.

Grist (2/13/19) feature: "Part of World Wrestling Entertainment's cultural currency has been to create struggles between good and evil. Sometimes a character's villainous narrative riffs on tried-and-true human emotion; sometimes it plays on the xenophobia of its general viewing audience. So what does it mean when the 'bad guy' is rallying for causes worth believing in? Since his shocking WWE Championship win in November 2018, Daniel Bryan has proclaimed himself a messenger for a cause much greater than himself — environmentalism. Bryan takes the audience to task for drinking from plastic water bottles and eating factory-farmed meat; quotes Alexander Hamilton and William Gaddis; beefs with wrestling venue Chase Field over its gluttonous specialty burger; and pairs his cardigans with anti-bigotry T-shirts on live broadcasts shown on the USA Network."

Thanks to Jimmy Carter — I mean Andrew Cuomo —New Yorkers might need to buy a few extra sweaters next winter.

New York Post (2/21/19) column: "New Yorkers experienced the headache caused by Gov. Cuomo's crusade against natural gas last week, when a public hearing was held to discuss Con Edison's January announcement that it would institute a moratorium on accepting new gas customers in Westchester County. The Empire State has stymied the construction of the necessary transmission infrastructure, so Con Ed is unable to keep up with demand. In addition to his decision to ban hydraulic fracturing in 2014 — aborting any hope that New York could profit from some of its most valuable natural resources — Cuomo and his regulators have denied necessary permits for three separate natural-gas pipeline projects."



Let me sail, let me sail, let the Orinoco flow.

S&P Global (2/22/19) reports: "US sanctions could more than halve Venezuela's crude production by the end of the year, hitting heavy oil joint ventures in the Orinoco Belt and fields operated solely by state company PDVSA in Lake Maracaibo and the Maturin Basin alike. PDVSA is partnered with several international oil companies in heavy crude projects in the Orinoco, ranging from the US' Chevron to Russia's Rosneft and China National Petroleum Corp. Together, those joint ventures produced just over half of Venezuela's total oil output of about 1.16 million b/d in January, according to the latest S&P Global Platts OPEC survey. Output in the Orinoco, which covers roughly 19,000 square miles in central Venezuela and is divided into 36 blocks within four exploration areas, is likely to see an immediate decline of as much as 400,000 b/d due to the US embargo on diluent exports to PDVSA. Diluent, specifically naphtha, is used in the production and transport of heavy oil out of the Orinoco."

Energy Markets

WTI Crude Oil: ↑ $57.37
Natural Gas: ↑ $2.77
Gasoline: ↑ $2.40
Diesel: ↑ $2.97
Heating Oil: ↑ $203.76
Brent Crude Oil: ↑ $67.31
US Rig Count: ↑ 1084

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Sent: 2/8/2019 3:32:01 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: To the energy-efficient gulags with you.

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MORNING ENERGY NEWS | 2.8.2019

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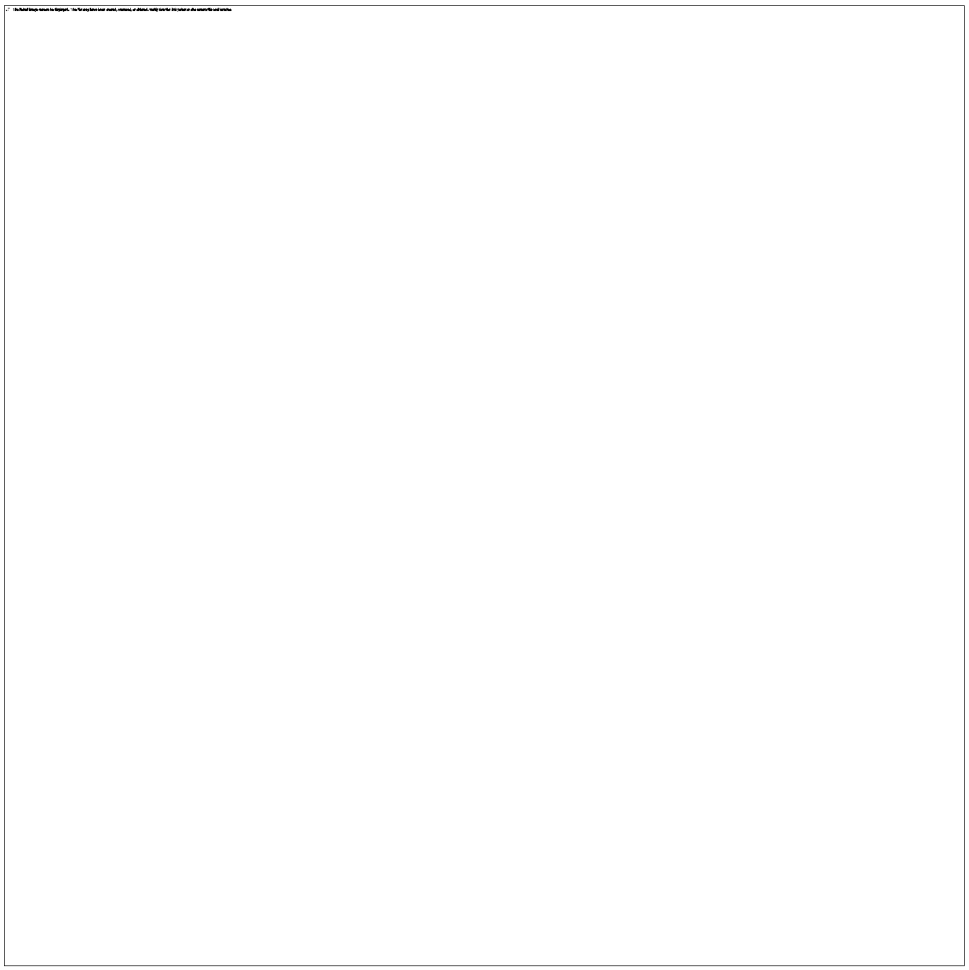
Rejoice, comrade.

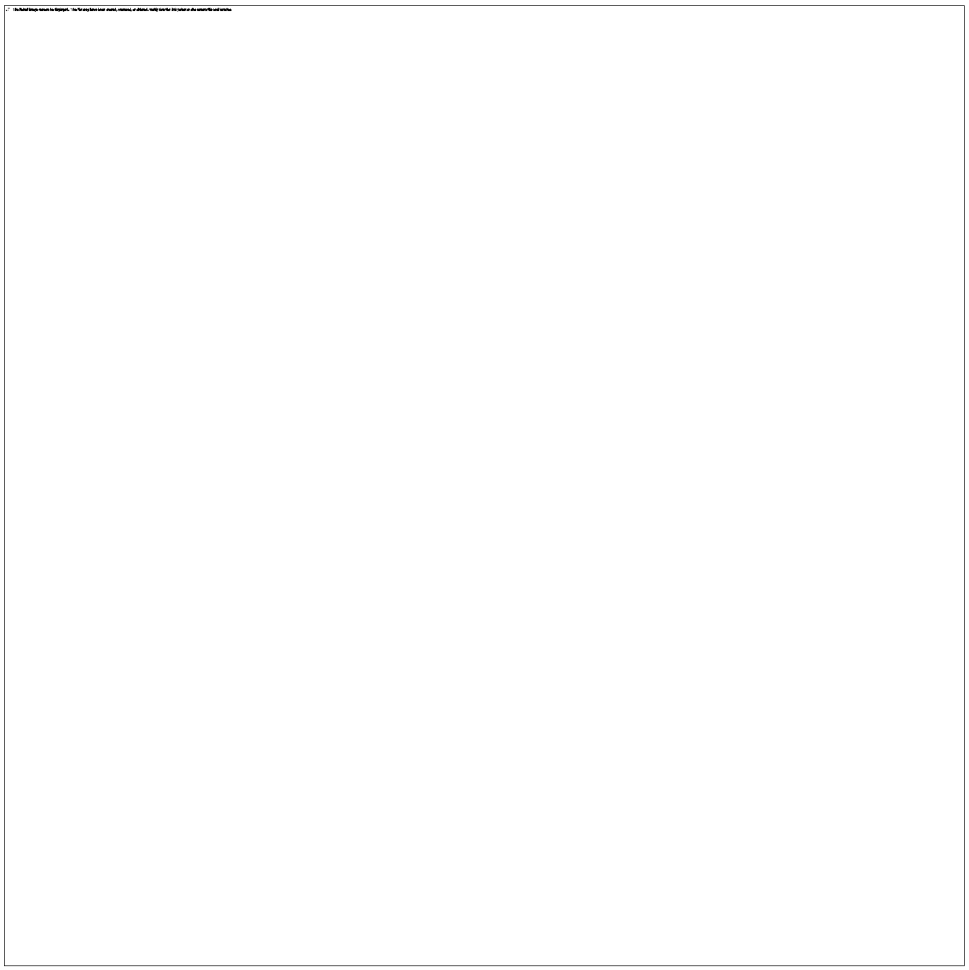
Babylon Bee (2/7/19) satire: "The full Green New Deal was revealed by Democratic lawmakers Thursday morning. The sweeping legislative proposal includes ambitious projects like installing high-speed rail across the nation, replacing or upgrading every building in the country, and transitioning the entire country to renewables by tomorrow afternoon. But perhaps best of all, the Green New Deal promises to build an energy-efficient Gulag in every neighborhood. Anyone who questions the wisdom of the Deal will be assigned to a Gulag for their new, greener job working for the government. The high-tech government buildings will be modeled after their Soviet predecessors but will have solar panels and wind power for a lower environmental impact as the government works you to death."



Better start getting those feet ready.

The Federalist (2/7/19) column: "While some of the specifics need to be ironed out, the plan's authors assure that this 'massive transformation of our society' needs some 'clear goals and a timeline.' The timeline is ten years. Here are some of the goals: GND calls for the elimination of all fossil fuel energy

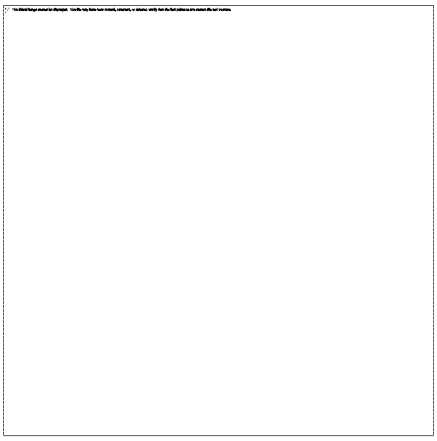
production, the lifeblood of American industry and life, which includes not only all oil but also natural gas — one of the cheapest sources of American energy, and one of the reasons the United States has been able to lead the world in carbon-emissions reduction. The GND also calls for eliminating all nuclear power, one of the only productive and somewhat affordable 'clean' energy sources available to us, in 11 years. This move would purge around 20 percent of American energy production so you can rely on intermittent wind for your energy needs. To be fair, under the GND, everyone will need to retrofit their cars with Flintstones-style foot holes or pedals for cycling. The authors state that the GND would like to replace every 'combustion-engine vehicle' — trucks, airplanes, boats, and 99 percent of cars — within ten years."



Unicorn farts and rainbow stew...

Daily Caller (2/7/19) reports: "Ocasio-Cortez's non-binding resolution calls for a variety of social justice and welfare state goals, including 'a family-sustaining wage, adequate family and medical leave, paid vacations and retirement security' and 'high-quality health care' benefits for Americans. The resolution

calls for 'repairing historic oppression' among certain groups, including minorities, immigrants, women, low-income workers, indigenous people and youth collectively called 'frontline and vulnerable communities'...The call to 'promote justice and equity' among those groups is seen as one of the 'Green New Deal's' primary goals by its architects. The House resolution has more than 20 cosponsors, according to a fact-sheet also obtained by NPR. '[I]n 10 years, we're trying to go carbon-neutral,' Ocasio-Cortez told NPR Thursday on why the 'Green New Deal' called for aggressively reducing emissions...'A six-page, non-binding resolution marketed as a 'War Plan' proves Congressman Cortez isn't prepared and hasn't done her homework,' Dan Kish, distinguished senior fellow at the Institute for Energy Research, told The Daily Caller."



"There is simply no way to mount a realistic response to climate change without changing political reality. And for now, the Green New Deal is the most realistic plan we've got for doing the latter."

– Eric Levitz, New York Magazine

Meanwhile in the real world, we're doing juuuuust fine.

E&E News (2/7/19) reports: "Oil and natural gas lease sales on federal lands in 2018 set an all-time annual record for revenue, generating $1.1 billion and nearly tripling the previous record set a decade ago, the Interior Department announced yesterday. The record revenue generated by 28 quarterly lease sales overseen by the Bureau of Land Management included 1,412 parcels covering nearly 1.5 million acres of federal land, Interior announced in a press

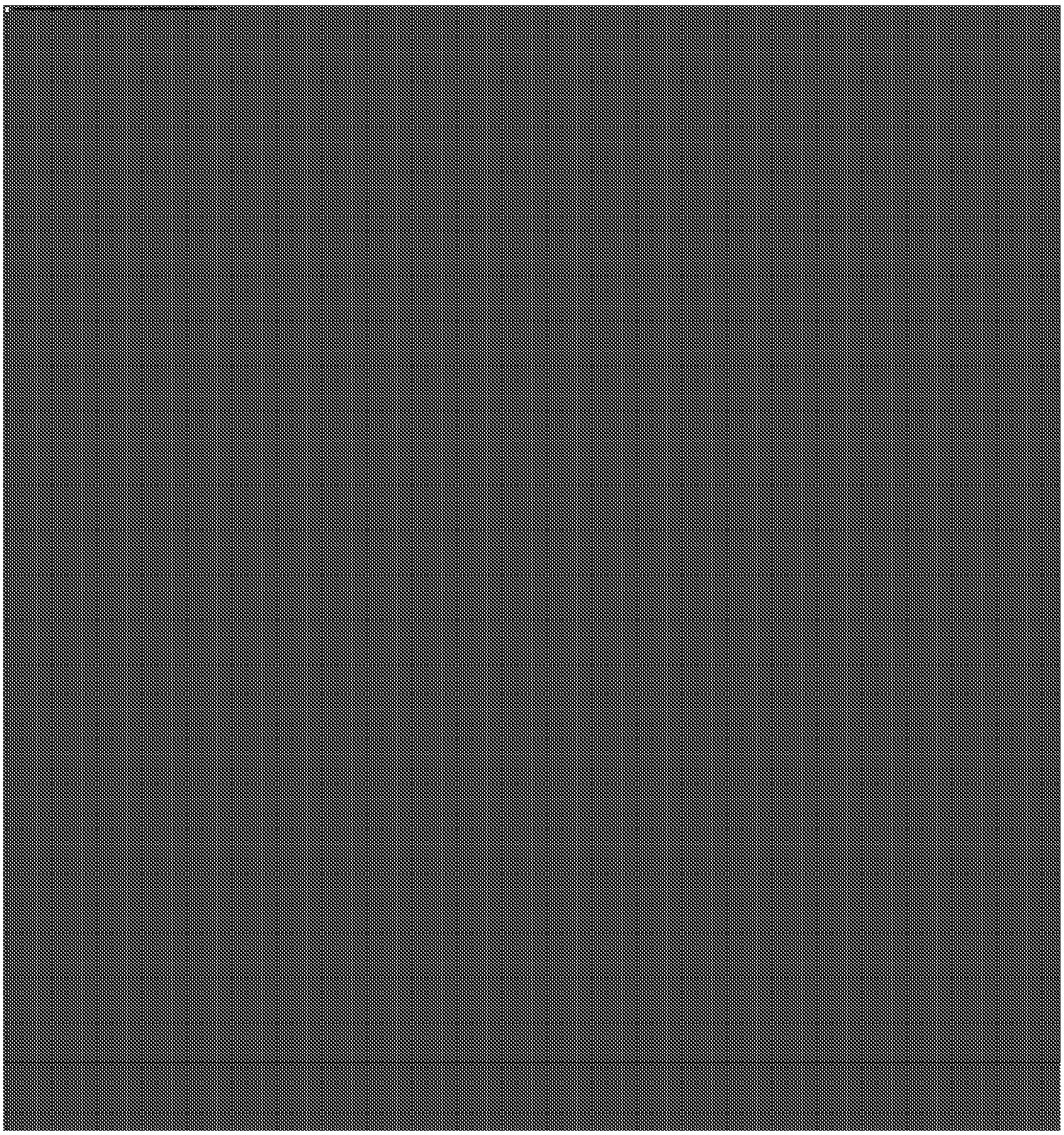
release proclaiming the record as evidence of an 'Energy Revolution Unleashed' — a paraphrase of President Trump's description of his energy policies during this week's State of the Union address. The previous annual record for lease sale revenue was $408 million in 2008."

The 'What Not to Wear' of politics.

Wall Street Journal (2/7/19) feature: "The discovery of oil in the early 20th century transformed Venezuela from an economic backwater into one of the richest nations in South America. Today, the country is grappling with a political crisis and an economic meltdown, which has led to shortages of food and medicine and prompted hundreds of thousands to flee."

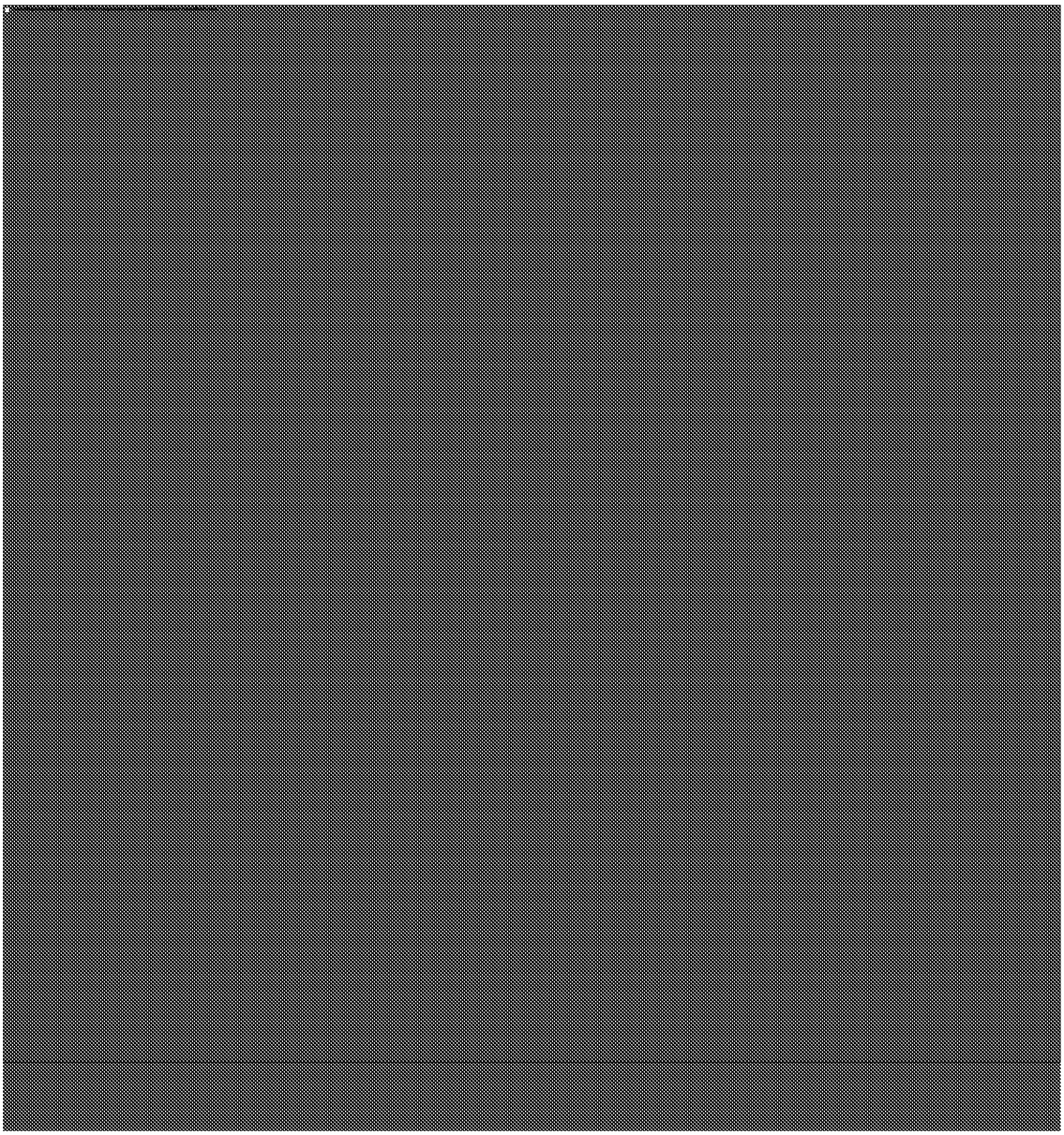
The answer, my friend, is not intermittent wind.

Clear Energy Alliance (2/2/19) video:



Remembering a legend and his wise counsel...

NBC News (2/7/19) reports: "Former Rep. John Dingell, D-Mich., the longest-serving member of Congress who played a key role in many pieces of landmark legislation, has died. He was 92. He was diagnosed with prostate cancer last year. 'Congressman Dingell died peacefully today at his home in Dearborn, surrounded by his wife Deborah,' the office of his wife, Rep. Debbie Dingell, said in a statement. 'He was a lion of the United States Congress and a loving son, father, husband, grandfather, and friend,' the statement said. 'He will be remembered for his decades of public service to the people of Southeast Michigan, his razor sharp wit, and a lifetime of dedication to improving the lives of all who walk this earth.'"



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Myron Ebell, Competitive Enterprise Institute

Phil Kerpen, American Commitment

Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity

Grover Norquist, Americans for Tax Reform

George Landrith, Frontiers of Freedom

Thomas A. Schatz, Citizens Against Government Waste

Richard Manning, Americans for Limited Government

Adam Brandon, FreedomWorks

Craig Richardson, E&E Legal

Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute

Jason Hayes, Mackinac Center

David Williams, Taxpayers Protection Alliance

Paul Gessing, Rio Grande Foundation

Seton Motley, Less Government

Nathan Nascimento, Freedom Partners Chamber of Commerce

Isaac Orr, Center of the American Experiment

Hon. Tim Huelskamp, Ph.D., The Heartland Institute

Energy Markets

WTI Crude Oil: ↓ $52.55
Natural Gas: ↑ $2.58
Gasoline: $2.28
Diesel: $2.92
Heating Oil: ↑ $190.26
Brent Crude Oil: ↑ $61.80
US Rig Count: ↑ 1073

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Message

From: Dolley Madison [fedsoc@fed-soc.ccsend.com]
on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 5/15/2019 3:48:15 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Starting Now: Executive Privilege and Congressional Oversight

May 15, 2019

Teleforum Starting NOW

Executive Privilege and Congressional Oversight

Federalism & Separation of Powers Practice Group

Wednesday, May 15, 2019 | 12:00 p.m. ET

John G. Malcolm
Vice President
Institute for Constitutional Government
Director

Prof. John C. Yoo
Emanuel S. Heller Professor of Law
University of California at Berkeley School of Law

Meese Center for Legal & Judicial Studies
and Senior Legal Fellow
The Heritage Foundation

What is the proper balance between Congressional oversight and Executive privilege? As it becomes clear that Congress is not satisfied with the Mueller Report on its face, and it will seek to conduct follow-up inquiries on its own, it has requested an unredacted copy of the Mueller Report, and its supporting documentation, and several witnesses who were interviewed during the investigation, including the former White House Counsel. Historically, Congress and the Executive have resolved their differences on disclosure requirements and moved forward, without significant resort to the Judiciary. What will and should be the role of the courts in any upcoming litigation? Could a final court ruling enhance rather than limit the power of the Executive? These and other questions will be discussed by our experts.

Speaker Biographies

John G. Malcolm

John G. Malcolm oversees The Heritage Foundation's work to increase understanding of the Constitution and the rule of law as director of the think tank's Edwin Meese III Center for Legal and Judicial Studies. Mr. Malcolm, who also is Heritage's Ed Gilbertson and Sherry Lindberg Gilbertson senior legal fellow, brings to the challenge a wealth of legal expertise and experience in both the public and private sectors.

Before being named director of the Meese Center in July 2013, Mr. Malcolm spearheaded the center's rule of law programs. His research and writing as senior legal fellow focused on criminal law, immigration, national security, religious liberty and intellectual property. The Meese Center works to educate government officials, the media and the public about the Constitution and legal principles -- and how they affect public policy. The center was

founded in 2001 and overseen until early 2013 by the conservative icon whose name it bears, former Attorney General Edwin Meese III.

In addition to his duties at Heritage, Mr. Malcolm is chairman of the Criminal Law Practice Group of the Federalist Society and chairman of the board of directors for Boys Town Washington, D.C., which provides homes and services to troubled children and families who are edging toward crisis.

Before joining Heritage in 2012, Mr. Malcolm was general counsel at the U.S. Commission on International Religious Freedom as well as a distinguished practitioner in residence at Pepperdine Law School. An independent and bipartisan panel, USCIRF reviews reported violations of religious freedom around the world and makes policy recommendations to the president, the secretary of state and Congress.

From 2004 to 2009, Mr. Malcolm was executive vice president and director of worldwide anti-piracy operations for the Motion Picture Association of America. He served as a deputy assistant attorney general in the Department of Justice's Criminal Division from 2001 to 2004, where he oversaw sections on computer crime and intellectual property, domestic security, child exploitation and obscenity, and special investigations. Immediately prior to that, he was a partner in the Atlanta law firm of Malcolm & Schroeder, LLP.

From 1990 to 1997, Mr. Malcolm was an assistant U.S. attorney in Atlanta, assigned to the fraud and public corruption section, and also an associate independent counsel, investigating fraud and abuse in the Department of Housing and Urban Development. He was honored with the Director's Award for Superior Performance for his work as an assistant U.S. attorney in the successful prosecution of Walter Leroy Moody Jr., who assassinated an 11th Circuit judge and the head of the Savannah chapter of the NAACP.

Mr. Malcolm began his law career as a law clerk to a federal district court judge and a federal appellate court judge as well as an associate at the Atlanta-based law firm of Sutherland, Asbill & Brennan. He is a graduate of Harvard Law School and holds a bachelor's degree in economics from Columbia College.

Prof. John C. Yoo

John Yoo is the Emanuel Heller Professor of Law at the University of California at Berkeley and a Visiting Scholar at the American Enterprise Institute. His latest book, *Striking Power: How Cyber, Robots, and Space Weapons Change the Rules for War*, was published in September 2017.

His other books include *Point of Attack* (Oxford UP 2014); *Taming Globalization* (Oxford UP 2012), *Confronting Terror* (Encounter 2011); *Crisis and Command* (Kaplan 2010); *War by Other Means* (Grove/Atlantic 2006); and *The Powers of War and Peace* (Chicago UP 2005). In 2014, Professor Yoo co-founded the Korea Law Center, the nation's leading center for the study of U.S.-Korean legal issues, and he directs Berkeley's Public Law and Policy program.

Professor Yoo has published numerous articles in the United States' top law journals. He also regularly contributes to the editorial pages of *The Wall Street Journal, New York Times, Washington Post, Los Angeles Times, National Review*, and *The Weekly Standard*, among others. He has also been a columnist for his hometown newspaper, *The Philadelphia Inquirer*.

Professor Yoo has served in all three branches of government. He was an official in the Office of Legal Counsel of the U.S. Department of Justice, where he worked on national security and terrorism issues after the September 11 attacks. He served as general counsel of the U.S. Senate Judiciary Committee under Chairman Orrin Hatch of Utah. He has been a law clerk for Justice Clarence Thomas of the U.S. Supreme Court and Judge Laurence Silberman of the U.S. Court of Appeals in Washington, DC. He has been a visiting professor at Seoul National University, Trento University, University of Chicago, and the Free University of Amsterdam.

Professor Yoo graduated from Yale Law School, where he was an articles editor of the *Yale Law Journal*, and summa cum laude from Harvard College with a degree in American history.

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From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 5/24/2019 2:04:21 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: The Kids Are Alright

View this email in your browser

MORNING ENERGY NEWS | 5.24.2019

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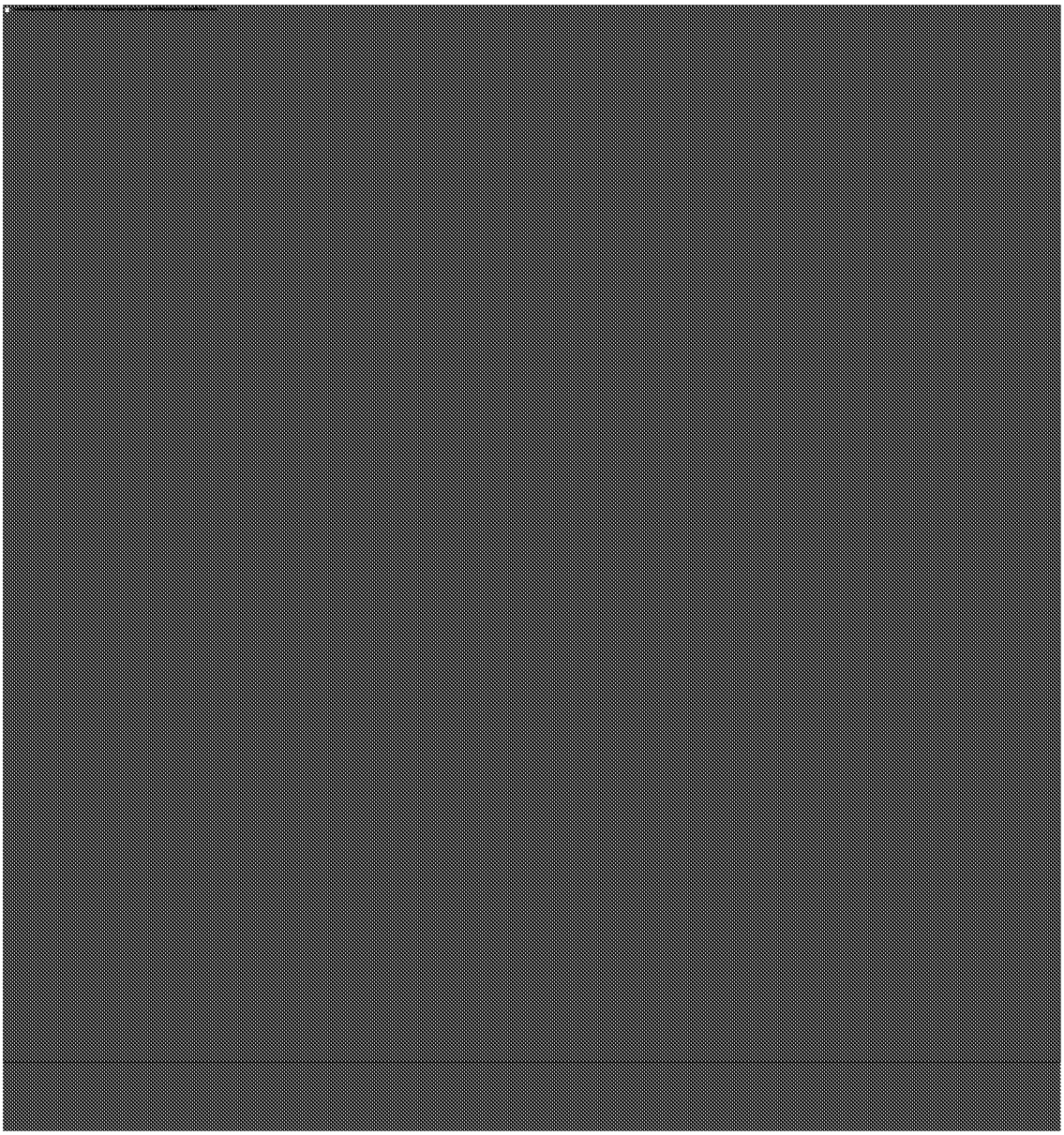
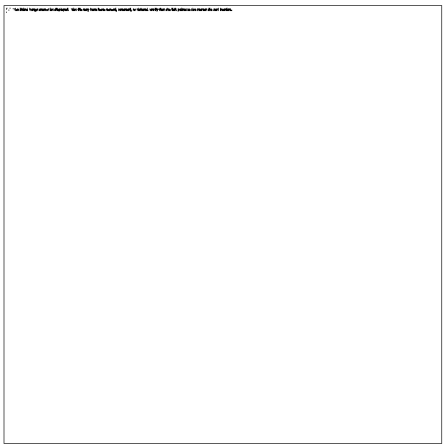
Unless they don't toe the line on climate change...

The Daily Mail (5/23/19) reports: "A Swedish teacher and her students allegedly bullied another pupil when she refused to skip school and participate in a climate protest. The so-called 'schools strike for climate' movement was started in August 2018 by Greta Thunberg, a 15-year-old Swedish climate activist... When one child said she did not wish to participate, the teacher became agitated and lectured her in front of the classroom that she should 'think through her decisions carefully', the magazine says. Other students of the class then accused her of being a 'climate denier'. The girl's mother blames the teacher for inciting classroom bullying, and said she felt scared of how angry and uneasy the atmosphere quickly turned."





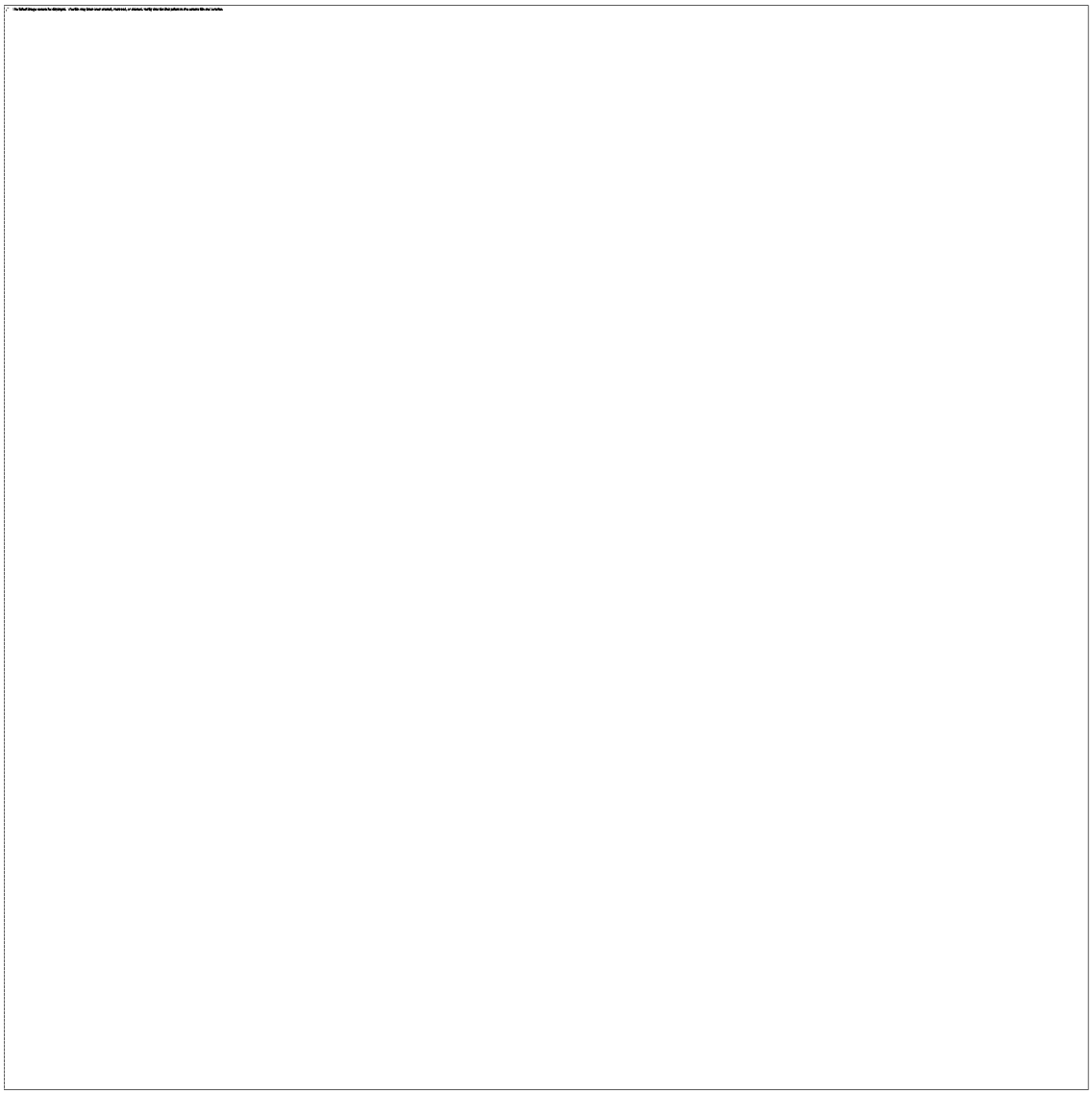
"Policymakers should end all taxpayer subsidies for energy producers and let the good people of Ohio – rather than politicians – decide which companies and utilities provide the products and services they want to buy."

– Rea S. Hederman Jr.,
The Buckey Institute

I would unite with anybody to do right and with nobody to do wrong.

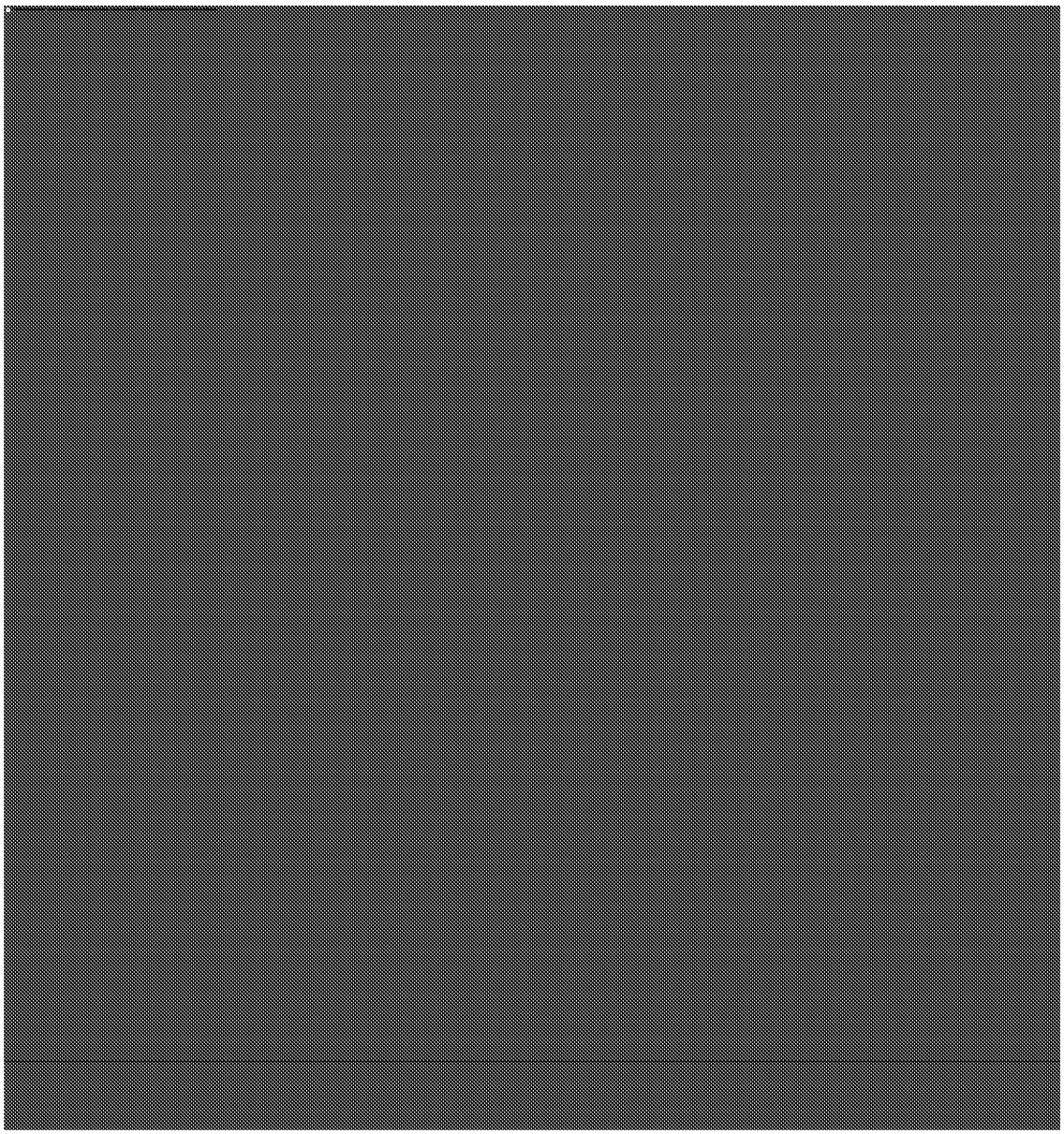
Bloomberg (5/23/19) reports: "The Sierra Club and billionaire Charles Koch have found at least one thing to agree on: They hate Ohio's plan to take away renewable power subsidies and give them to coal and nuclear plants. The pair, normally at odds over energy issues, have both found elements to rail against

in the 'Ohio Clean Air Program,' which passed a key hurdle Thursday in the state House of Representatives. The Republican bill would scuttle wind and solar quotas and create an annual fund of about $190 million, primarily to bail out reactors owned by bankrupt FirstEnergy Solutions Corp... 'It is cronyism on full display,' Micah Derry, Ohio director for the Koch-backed group Americans for Prosperity, told lawmakers at hearing earlier this month."


The fillable image exceeds the dimensions of one page. Use the tools and buttons in the toolbar to view the entire form.

Well, at least they'll have Social Security.

Market Watch (5/23/19) reports: "Lori Rodriguez, a 27-year-old communication professional in New York City, is not saving for retirement, and it isn't necessarily because she can't afford to — it's because she doesn't expect it to matter. Like many people her age, Rodriguez believes climate change will have catastrophic effects on our planet. Some 88% of millennials — a higher percentage than any other age group — accept that climate change is happening, and 69% say it will impact them in their lifetimes. Engulfed in a constant barrage of depressing news stories, many young people are skeptical about saving for an uncertain future."



New study, same conclusions.

Energy In Depth (5/17/19) reports: "Two years of data recorded around Marcellus Shale development near a school in Pennsylvania show the operations 'do not pose any acute or chronic health concerns' and have not impacted air quality in the surrounding area, according to a comprehensive study released this week... Researchers concluded: 'Our air quality and public health evaluation of December 2016 to October 2018 ambient air quality data collected at three sites in proximity to the Yonker well pad in Mount Pleasant Township showed that measured PM2.5 and VOC concentrations were consistently below health-based air comparison values and thus are not expected to pose acute or chronic health concerns.'"

Leasing for less than a cup of covfefe.

Bloomberg (5/23/19) reports: "The Trump administration's auction of drilling rights on roughly 300,000 acres in Nevada last September appeared to be a bust when it failed to attract any bids. But within weeks, five oil developers quietly snapped up roughly 15% of the parcels, paying just $1.50 an acre in

annual rent, compared with the average bid of $524 per acre paid during competitive auctions in the past three years."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance
Myron Ebell, Competitive Enterprise Institute
Phil Kerpen, American Commitment
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Grover Norquist, Americans for Tax Reform
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Craig Richardson, E&E Legal
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jason Hayes, Mackinac Center
David Williams, Taxpayers Protection Alliance
Paul Gessing, Rio Grande Foundation
Seton Motley, Less Government

Nathan Nascimento, Freedom Partners Chamber of Commerce
Isaac Orr, Center of the American Experiment
David T. Stevenson & Clint Laird, Caesar Rodney Institute
John Droz, Alliance for Wise Energy Decisions
Hon. Tim Huelskamp, Ph.D., The Heartland Institute
Mark Mathis, Clear Energy Alliance

Energy Markets

WTI Crude Oil: ↑ $58.64
Natural Gas: $2.58
Gasoline: $2.84
Diesel: $3.10
Heating Oil: ↑ $197.63
Brent Crude Oil: ↑ $68.70
US Rig Count: 1024

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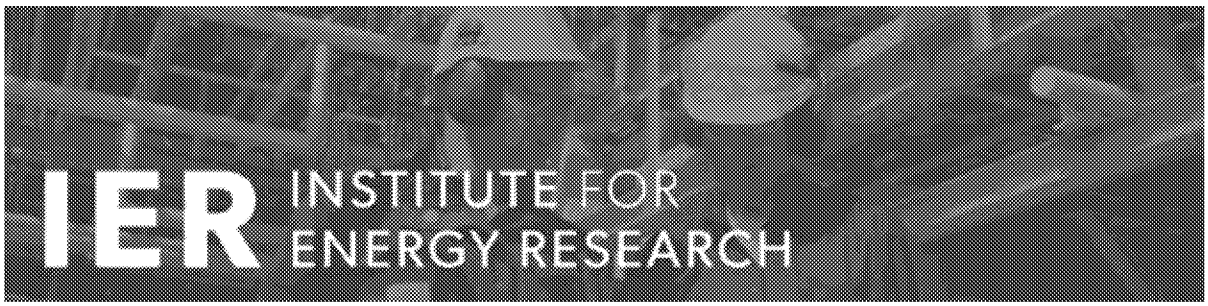
Message

From: Erin Amsberry, IER [eamsberry@ierdc.org]
Sent: 12/18/2018 4:36:27 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: IER Introduces Advisory Council



FOR IMMEDIATE RELEASE
December 18, 2018

MEDIA CONTACT: ERIN AMSBERRY
202.621.2955

IER Welcomes Five Energy Experts to Join Newly Created Advisory Council

WASHINGTON — Today, the Institute for Energy Research (IER) launches an Advisory Council and welcomes five inaugural members to its organizational network. The Advisory Council consists of economists, academics, policy experts, and industry leaders dedicated to advancing thoughtful solutions to problems in the energy space rooted in free market principles. The advisors will play a key role in guiding IER's path as well as shaping research and program activities.

The inaugural Advisory Council members include:

Alex Alexiev, policy expert and author of dozens of books and hundreds of articles on geopolitics, energy issues and international relations. Alex is widely regarded as an expert in many fields and has held prominent governmental advisory roles both in America and abroad.

David Kreutzer, economist and policy analyst who has written extensively on economics and energy issues with work appearing in publications such as National Tax Journal, Journal of Energy and Development, and more. David has taught at a number of universities and previously served as a senior research fellow at the Heritage Foundation.

Lisa Linowes, Executive Director for The Wind Action Group and senior fellow at the Texas

Public Policy Foundation. Lisa has dedicated more than a decade to championing sound policies relating to wind energy in America.

Robert Michaels, lecturer on economics at California State University, Fullerton, where he has served as Professor of Economics for 25 years. Robert is a widely sought after expert on energy and has advised governmental bodies across the country and globe on energy policies.

Hilary Sills, president of Sills Associates with over 40 years of experience in government relations, legislative and regulatory advocacy, international affairs and corporate communications. Hilary has a deep understanding of both the Executive and Legislative Branches of government and expertise in energy and regulatory issues.

IER President Thomas Pyle stated:

"We are thrilled to welcome these accomplished and trusted advisors into the IER fold. At IER we pride ourselves on our ability to convene the best and brightest minds with respect to free market energy policies. The members of the Advisory Council will provide IER with expert guidance and insight that will help us shape our free market positions. We are grateful for their willingness to share their expertise and look forward to working with them."

Read their full bios here.

###

For media inquiries, please contact Erin Amsberry
eamsberry@ierdc.org
202.621.2955

IER is a 501(c)(3) public foundation that conducts intensive research and analysis on the functions, operations, and government regulation of global energy markets. No financial support is sought or accepted from government sources.

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RSVP List for 111B Event

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Tony Kavanagh	American Electric Power
Marty McBroom	American Electric Power
Daniel Fort	
Jim Hunter	Jim Hunter LLC
Melissa Horton	Southern Company
Fred Eames	Hunton & Williams
Dan Byers	US Chamber of Commerce
Heath Knakmuhs	US Chamber of Commerce
Jake Tyner	US Chamber of Commerce
Grover Norquist	Americans for Tax Reform
Mike Palicz	Americans for Tax Reform
Bonner Cohen	National Center for Public Policy Research
Danny Gray	Charah Solutions, Inc.
Thomas Adams	American Coal Ash Association
Grant Kidwell	ALEC
Harlan Watson	
Martin Rodriguez	Libre Initiative
Becky Dunlop	Heritage
Aaron Stover	The Heartland Institute
Angela Logomasini	CEI
Myron Ebell	CEI
Rick Manning	Americans for Limitd Government
Steve Milloy	
Jon Toomey	Fitzgerald Glider Kits
Craig Richardson	E&E Legal
Michelle Bloodworth	ACCCE
Paul Bailey	ACCCE
Joseph Stanko	Hunton & Williams
Marc Morano	
Darren Bakst	Heritage

Luncheon

Darnell Sutton	Hollywall Inc.
Carolyn Green	Proffessional Environmental Engineers
Steve Nalefski	Burns & McDonnell
Raynard Jackson	NBCC

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Personal Email / Ex. 6

Personal Email / Ex. 6

Harry Alford	NBCC
Kay DeBow	NBCC
Aaron Manaigo	Global Politcal Solutions
Jerry Jung	
Dirck Hargraves	Vox Global
Quinn Fowler	The Eymit Group
Damien Hammond	Windjammer Environmental LLC
Shaun Wiggins	Soteryx Corporation
Daniel McMullen	Soteryx Corporation
Shaun Garrison	Ameren
Maggie Harris	ESC, Inc.
Puneet Verma	Chevron
Jonathan Edwards	Blue Canopy Group, LLC
Jerry Johnson	National Religious Broadcasters
Aaron Mercer	National Religious Broadcasters

Personal Email / Ex. 6

Message

From: Konkus, John [konkus.john@epa.gov]
Sent: 11/8/2018 7:15:06 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: FW: Strengthening Transparency in Regulatory Science/ Media request

---

From: Rust, Susanne <susanne.rust@latimes.com>
Sent: Thursday, November 8, 2018 2:13 PM
To: Block, Molly <block.molly@epa.gov>
Cc: Press <Press@epa.gov>
Subject: Re: Strengthening Transparency in Regulatory Science/ Media request

Hi,

Would it be fair to say the EPA declined to comment on Milloy and Calabrese's influence on the proposed ruling? Or will you have a response.

Thank you.

Susanne

From: Rust, Susanne
Sent: Thursday, November 8, 2018 7:24:49 AM
To: Block, Molly
Cc: Press
Subject: Re: Strengthening Transparency in Regulatory Science/ Media request

Hi,

I have information suggesting that Steve Milloy and Edward Calabrese were instrumental in crafting the ruling's suggestion to incorporate risk models other than LNT.

I wonder if you could tell me what their role was in crafting the rule and and who solicited their input?

Thank you.

Susanne

From: Rust, Susanne
Sent: Thursday, November 8, 2018 6:27:41 AM

To: Block, Molly
Cc: Press
Subject: Re: Strengthening Transparency in Regulatory Science/ Media request

Understood. Still wondering when a final ruling or decision is expected?

From: Block, Molly <block.molly@epa.gov>
Sent: Thursday, November 8, 2018 6:27:01 AM
To: Rust, Susanne
Cc: Press
Subject: RE: Strengthening Transparency in Regulatory Science/ Media request

As we've stated before, we are currently reviewing 590,000 public comments on the proposal.

From: Rust, Susanne <susanne.rust@latimes.com>
Sent: Thursday, November 8, 2018 9:26 AM
To: Block, Molly <block.molly@epa.gov>
Cc: Press <Press@epa.gov>
Subject: Re: Strengthening Transparency in Regulatory Science/ Media request

Hi -

Any idea when the EPA will make a decision or submit a final ruling?

Thank you.

From: Block, Molly <block.molly@epa.gov>
Sent: Wednesday, November 7, 2018 1:14:50 PM
To: Rust, Susanne
Cc: Press
Subject: RE: Strengthening Transparency in Regulatory Science/ Media request

This should be helpful for you:

The proposed regulation takes comment on ensuring transparency and consideration of high quality studies evaluating models and model assumptions, including high quality studies that examine different potential dose-response relationships. You need look no further than the 590,000 public comments provided to EPA on this proposal to see literally thousands of different viewpoints on particular studies, and the EPA is currently reviewing all of those comments to ensure the best proposal is put forward.

From: Rust, Susanne <susanne.rust@latimes.com>
Sent: Wednesday, November 7, 2018 3:18 PM
To: Block, Molly <block.molly@epa.gov>

Cc: Press <Press@epa.gov>
Subject: Re: Strengthening Transparency in Regulatory Science/ Media request

Hi

Ha. No. I'm not suggesting any new models. Just wondering what this is based on and why it's being incorporated? There's a discussion in the ruling about doubts re linearity non threshold models, and I'm curious about it's origin and why it's included in a ruling that seems to be mostly about transparency and open data? And what this would mean for the way EPA evaluates an performs risk assessments?

Thanks. Susanne

From: Block, Molly <block.molly@epa.gov>
Sent: Wednesday, November 7, 2018 11:58 AM
To: Rust, Susanne
Cc: Press
Subject: RE: Strengthening Transparency in Regulatory Science/ Media request

Susanne –

Do you have specific questions? Or are you interested in any specific models? The transparency rule does not ask for the public to suggest or otherwise comment on "new models to evaluate risk assessment."

I'm happy to help, just trying to figure out the best way to answer your inquiry.

Molly

Begin forwarded message:

> **From:** "Rust, Susanne" <susanne.rust@latimes.com>
> **Date:** November 7, 2018 at 8:37:03 AM EST
> **To:** "daguillard.robert@epa.gov" <daguillard.robert@epa.gov>
> **Subject: Strengthening Transparency in Regulatory Science/ Media request**
>
> Dear Mr. Daguillard,
>
> I am working on a story about the "Strengthening Transparency in Regulatory Science" proposal and I am hoping I can get some information and maybe a comment?

I am particularly interested in the proposed rule's request for new models to evaluate risk assessment.

Any chance you can talk today? Or can you put me in touch with someone who can tell me how this came about and why? My deadline is tomorrow at noon.

Thank you.

Susanne Rust

Reporter, Los Angeles Times

650-804-6790

Message

From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 10/4/2018 2:06:28 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Presidential Alert

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MORNING ENERGY NEWS | 10.4.2018

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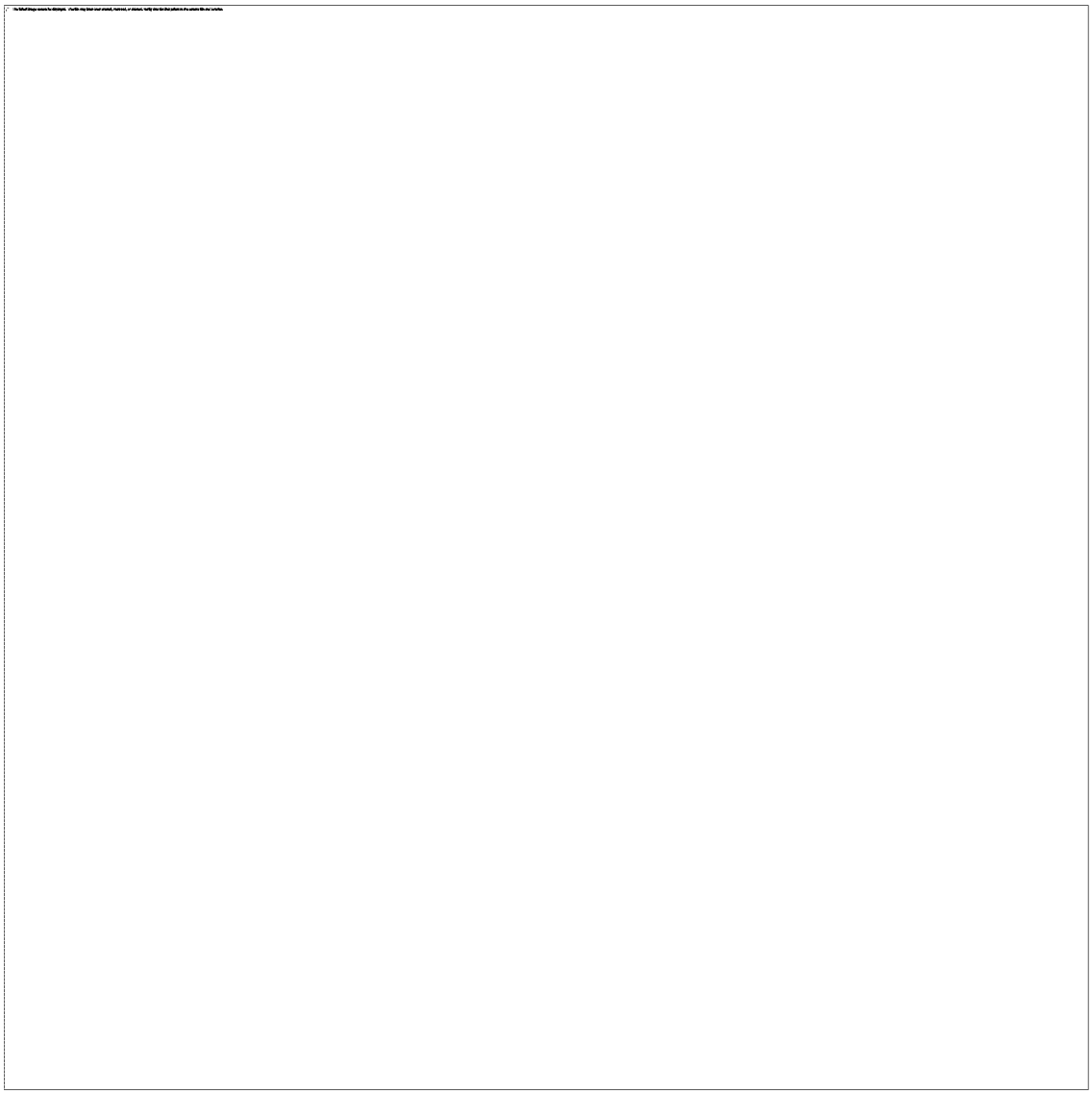
Beyond fake news.

The Daily Caller (10/3/18) reports: "The Associated Press issued a major correction Wednesday to a story claiming the Environmental Protection Agency (EPA) said 'a little radiation may be healthy.' EPA officials said The AP's story 'was not only wrong, but contrary to information provided to the reporter by the EPA press office in response to her inquiries.' EPA officials welcomed the correction and said media outlets who parroted The AP should do the same. 'If you used AP's inaccurate reporting from October 2nd on EPA's radiation standards you should want to immediately correct your stories to stop the spread of alarming misinformation,' EPA said in an emailed statement sent Wednesday."


The Rollout Image exceeds the dimensions. A portion may have been cut or scaled, mirrored, or cleared. Verify that the pattern in the camera file is correct.

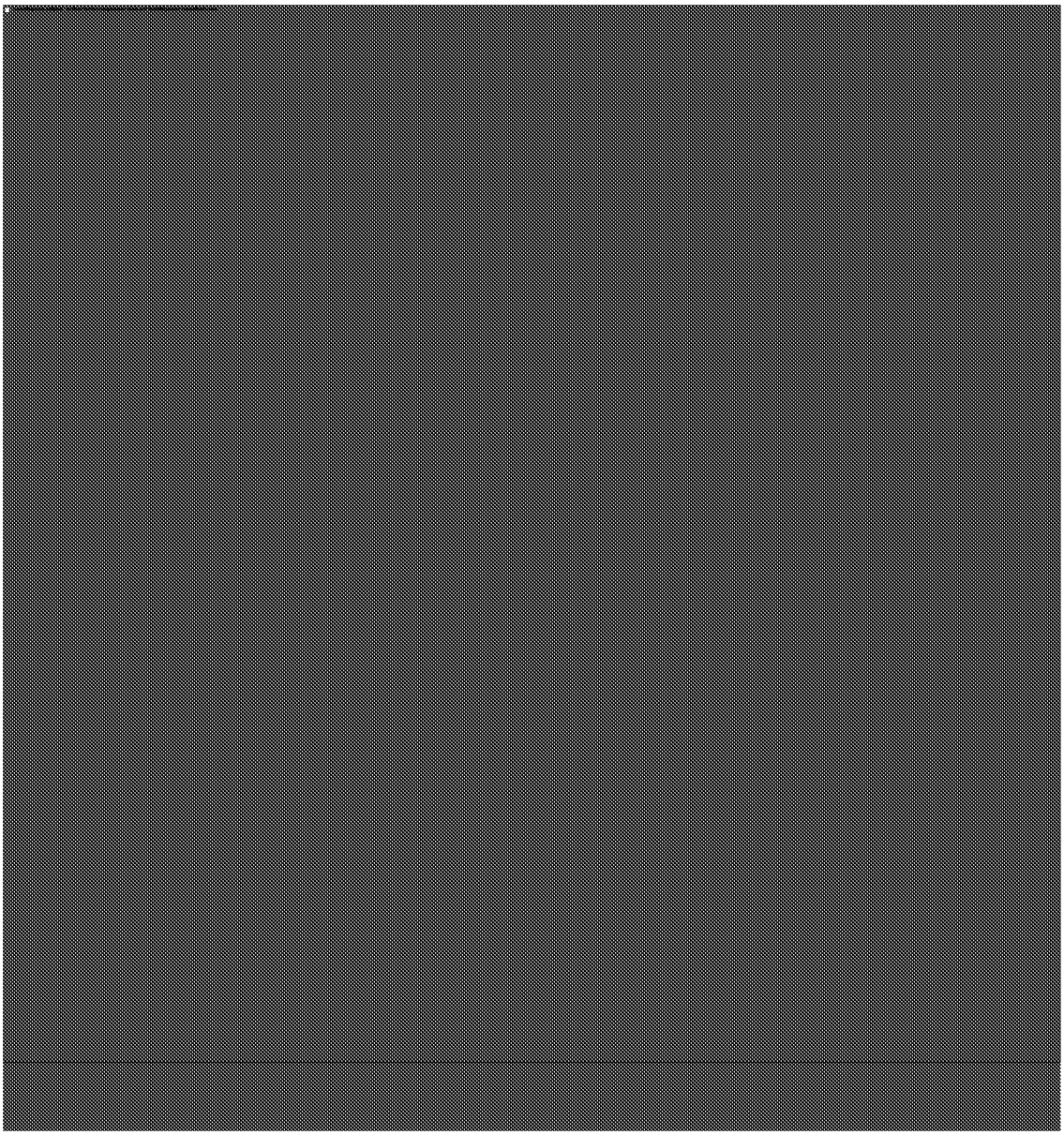
"Obviously, higher energy prices are a burden for Arizonans, and any policy that increases prices on necessities such as electricity, will disproportionally affect low-income families. More money spent paying the electric bill means less money for food, rent, or a mortgage payment, clothing, medical expenses, as well as less money for savings."

– Tim Benson, The Heartland Institute

Exporting more of that good, good stuff.

Washington Examiner (10/1/18) reports: "From the first quarter of 2017 to the

second quarter of 2018, coal exports have risen about 36 percent, based on EIA quarterly data. Coal exports have risen from around 22 million short tons in 2017 to around 30 million short tons, so far, in 2018... For the first half of 2018, net natural gas exports averaged 0.87 billion cubic feet per day, which is more than double the average daily net exports during all of 2017, the EIA also reported on Monday."



One word: plastics.

Forbes (10/1/18) reports: "The Shale Revolution draws attention for the growth in fossil fuels -- crude oil and natural gas, where the U.S. leads the world. But we're even more dominant in NGLs, contributing one-third of global production. The impact of NGLs and consequent growth in America's petrochemical industry receives far less coverage, although it's another huge success story."

Hola, Sierrita!

Utility Dive (10/3/18) reports: "The project calls for construction of a new compressor station in Arizona, estimated to cost about $56 million. The order includes some construction mitigation measures the company must take, but regulators said the project 'would not constitute a major federal action significantly affecting the quality of the human environment.' Kinder Morgan's Sierrita pipeline interconnects with an existing gas pipeline in Mexico owned by IENova and 'provides transportation service to growing markets in northwest Mexico,' according to the company."

Energy Markets

WTI Crude Oil: ↓ $76.23
Natural Gas: ↑ $3.23
Gasoline: ↑ $2.91
Diesel: ↑ $3.24
Heating Oil: ↓ $243.11
Brent Crude Oil: ↓ $86.13
US Rig Count: ↑ 1150

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Message

From: Abboud, Michael [abboud.michael@epa.gov]
Sent: 10/2/2018 8:16:04 PM
To: Woods, Clint [woods.clint@epa.gov]
CC: Konkus, John [konkus.john@epa.gov]
Subject: Re: APNewsBreak: Trump's EPA moving to loosen radiation limits

That was while we were on the phone. We'll give them more time.

Sent from my iPhone

On Oct 2, 2018, at 4:14 PM, Woods, Clint <woods.clint@epa.gov> wrote:

> Updated 18 mins ago but title/"radiation regulation" and other problems unaddressed
> https://apnews.com/

APNewsBreak: Trump's EPA moving to loosen radiation limits

WASHINGTON (AP) — The Trump administration is quietly moving to weaken U.S. radiation regulations, turning to scientific outliers who argue that a bit of radiation damage is actually good for you — like a little bit of sunlight.

The government's current, decades-old guidance says that any exposure to harmful radiation is a cancer risk. And critics say the proposed change could lead to higher levels of exposure for workers at nuclear installations and oil and gas drilling sites, medical workers doing X-rays and CT scans, people living next to Superfund sites and any members of the public who one day might find themselves exposed to a radiation release.

The Trump administration already has targeted a range of other regulations on toxins and pollutants, including coal power plant emissions and car exhaust, that it sees as costly and burdensome for businesses. Supporters of the EPA's new radiation guidance argue the government's current no-tolerance rule for radiation damage forces unnecessary spending for handling exposure in accidents, at nuclear plants, in medical centers and at other sites.

"This would have a positive effect on human health as well as save billions and billions and billions of dollars," Edward Calabrese, a toxicologist at the University of Massachusetts, said in 2016. He was to be the lead witness at a congressional hearing Wednesday on EPA's push for what it calls transparency in science.

The proposed rule would require regulators to consider "various threshold models across the exposure range" when it comes to dangerous substances.

While it does not specify that it's addressing radiation and chemicals, an EPA news release on the rule quotes Calabrese as saying it would: "The proposal represents a major scientific step forward by recognizing the widespread occurrence of non-linear dose responses in toxicology and epidemiology for chemicals and radiation and the need to incorporate such data in the risk assessment process."

The comment period for the science regulation has ended and the agency is currently reviewing the comments. There's no specific date for final action by the administration. The EPA declined to make an official with its radiation-protection program available.

Radiation is everywhere, from potassium in bananas to the microwaves popping our popcorn. Most of it is benign. But what's of concern is the higher-energy, shorter-wave radiation, like X-rays, that can penetrate and disrupt living cells, sometimes causing cancer.

As recently as this March, the EPA's online guidelines for radiation effects advised: "Current science suggests there is some cancer risk from any exposure to radiation."

"Even exposures below 100 millisieverts" — an amount roughly equivalent to 25 chest X-rays or about 14 CT chest scans — "slightly increase the risk of getting cancer in the future," the agency's guidance said.

But that online guidance — separate from the rule-change proposal — was edited in July to add a section emphasizing the low individual odds of cancer: "According to radiation safety experts, radiation exposures of ...100 millisieverts usually result in no harmful health effects, because radiation below these levels is a minor contributor to our overall cancer risk," the revised policy says.

Calabrese and his supporters argue that smaller exposures of cell-damaging radiation and other carcinogens can serve as stressors that activate the body's repair mechanisms and can make people healthier. They compare it to physical exercise or sunlight.

Mainstream scientific consensus on radiation is based on deceptive science, says Calabrese, who argued in a 2014 essay for "righting the past deceptions and correcting the ongoing errors in environmental regulation."

EPA spokesman John Konkus said in an email that the proposed rule change is about "increasing transparency on assumptions" about how the body responds to different doses of dangerous substances and that the agency "acknowledges uncertainty regarding health effects at low doses" and supports more research on that.

The radiation regulation is supported by Steven Milloy, a Trump transition team member for the EPA who is known for challenging widely accepted ideas about manmade climate change and the health risks of tobacco. He has been promoting Calabrese's theory of healthy radiation on his blog.

But Jan Beyea, a physicist whose work includes research with the National Academies of Science on the 2011 Fukushima nuclear power plant accident, said the EPA science proposal represents voices "generally dismissed by the great bulk of scientists."

The EPA proposal would lead to "increases in chemical and radiation exposures in the workplace, home and outdoor environment, including the vicinity of Superfund sites," Beyea wrote.

At the level the EPA website talks about, any one person's risk of cancer from radiation exposure is perhaps 1 percent, Beyea said.

"The individual risk will likely be low, but not the cumulative social risk," Beyea said.

"If they even look at that — no, no, no," said Terrie Barrie, a resident of Craig, Colorado, and an advocate for her husband and other workers at the now-closed Rocky Flats nuclear-weapons plant, where the U.S. government is compensating certain cancer victims regardless of their history of exposure.

"There's no reason not to protect people as much as possible," said Barrie.

U.S. agencies for decades have followed a policy that there is no threshold of radiation exposure that is risk-free.

The National Council on Radiation Protection and Measurements reaffirmed that principle this year after a review of 29 public health studies on cancer rates

among people exposed to low-dose radiation, via the U.S. atomic bombing of Japan in World War II, leak-prone Soviet nuclear installations, medical treatments and other sources.

Twenty of the 29 studies directly support the principle that even low-dose exposures cause a significant increase in cancer rates, said Roy Shore, chief of research at the Radiation Effects Research Foundation, a joint project of the United States and Japan. Scientists found most of the other studies were inconclusive and decided one was flawed.

None supported the theory there is some safe threshold for radiation, said Shore, who chaired the review.

If there were a threshold that it's safe to go below, "those who profess that would have to come up with some data," Shore said in an interview.

"Certainly the evidence did not point that way," he said.

The U.S. Food and Drug Administration, which regulates electronic devices that emit radiation, advises, broadly, that a single CT scan with a dose of 10 millisieverts may increase risks of a fatal cancer by about 1 chance in 2,000.

Supporters of the proposal say it's time to rethink radiation regulation.

"Right now we spend an enormous effort trying to minimize low doses" at nuclear power plants, for example, said Brant Ulsh, a physicist with the California-based consulting firm M.H. Chew and Associates. "Instead, let's spend the resources on minimizing the effect of a really big event."

Message

From: Tom Pyle [info@americanenergyalliance.org]
Sent: 10/22/2018 3:02:37 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Will the Evergreen State tie its own noose?

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MORNING ENERGY NEWS | 10.22.2018

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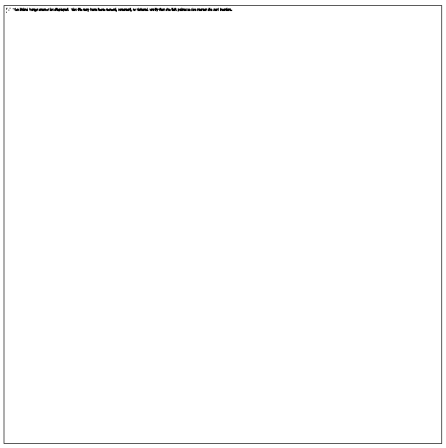
He's already hedging.

Washington Examiner (10/21/18) reports: "Washington state could be the first in the nation to enact a voter-approved carbon tax if a ballot initiative succeeds there in November, an outcome that supporters say would prove the political tenability of a major policy to combat climate change. 'Even being in a competitive position is a significant achievement,' Washington Gov. Jay Inslee, a Democrat and rumored 2020 presidential candidate, told the *Washington Examiner* in an interview. 'If it doesn't happen this year, we are not done.' However, if voters in this progressive western state reject a carbon tax for the second time, after voting down a similar plan two years ago, it may slow what modest momentum there is for pricing pollution at the national level."

Technically it's not a tax? Please. And the governor thinks an $800 annual "fee" is too

low. I think some Washington families might disagree.

Axios (10/22/18) column: "Organizers of the proposal have convened a coalition larger and more progressive than the last effort. Backers include billionaire Microsoft co-founder Bill Gates and an array of environmental groups. The money raised from the carbon fee — technically it's not a tax — would fund clean-energy investments and other causes (clean energy would get 70%). That's a more progressive policy than the 2016 initiative that lowered other taxes. Clean-energy investments would drive most of the emission reductions because the fee is too low to change consumer behavior on its own, said Inslee, who has been fundraising for the proposal on his personal time."



"It is clear that the available evidence fails to link $PM_{2.5}$ in outdoor air with death. Therefore, a benefit-cost analysis for the SAFE rule need not concern itself with $PM_{2.5}$ and death."

– Steve Milloy, via the Competitive Enterprise Institute

They've already ruined California, but why stop there, right?

Wall Street Journal (10/19/18) editorial: "Progressive money man Tom Steyer has many causes—impeaching Donald Trump, electing Senate Democrats, and this year ballot initiatives to impose renewable-energy mandates on voters who don't realize how their electricity bills will rise. Mr. Steyer's NextGen Climate Action first targeted Michigan, where utilities agreed to higher

renewable quotas if Mr. Steyer dropped his initiative. Next was Nevada, where referenda need to pass twice to become law. Nevada utilities are rolling over this year to save for a ballot brawl in 2020. This year's ground zero is Arizona, where Mr. Steyer's Proposition 127 would require utilities to produce 50% of electricity from renewable sources by 2030. This would more than triple Arizona's current mandate of 15% by 2025. The Steyer mandate would also bar utilities from counting obvious forms of renewable energy, such as nuclear (now 29% of the state energy mix) and most hydropower (6%)."

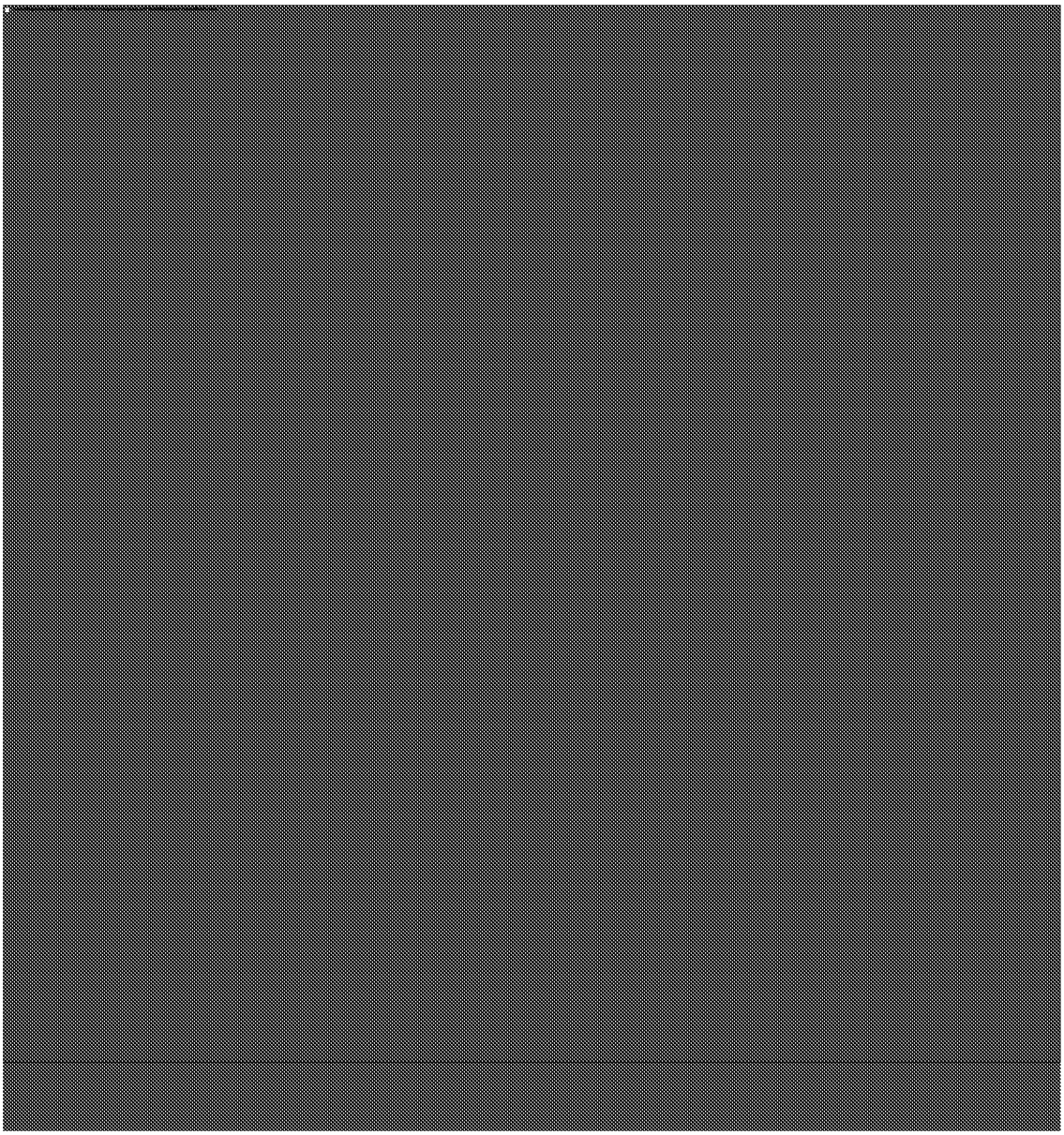
Knaves.

CBS News (10/18/18) reports: "An environmental group has denounced a House oversight committee for suggesting the organization's efforts to block construction of a U.S. military base on the southern Japanese island of Okinawa may require it to register as foreign agent...The committee's interest in the Center for Biological Diversity stems from the group's efforts to protect a manatee-like animal called the dugong that's associated with traditional creation myths in Japan. Environmentalists say the construction of two aircraft runways as part of a base relocation plan on Okinawa will destroy the dugong's critical feeding grounds and habitat. In early August, however, a federal judge threw out a lawsuit that challenged the plan. Bishop and Westerman said the

Center for Biological Diversity appears to have engaged in political activities on behalf of 'foreign anti-base activists, environmental groups, and members of the Okinawan government opposed to the U.S. military's presence' on the southern Japanese island, according to a seven-page letter they sent to the group in late June."

Remember this when you see which U.S. companies support taxing their competitors.

The Rebel (10/20/18) video:



Energy Markets

WTI Crude Oil: ↑ $69.23
Natural Gas: ↓ $3.24
Gasoline: $2.85
Diesel: ↓ $3.29
Heating Oil: ↑ $231.56
Brent Crude Oil: ↑ $80.07
US Rig Count: 1149

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on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 10/2/2018 5:45:02 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: (CORRECTION) Teleforum Starting at 2:00 P.M. ET: Courthouse Steps Oral Argument: Gundy v. United States

The Federalist Society

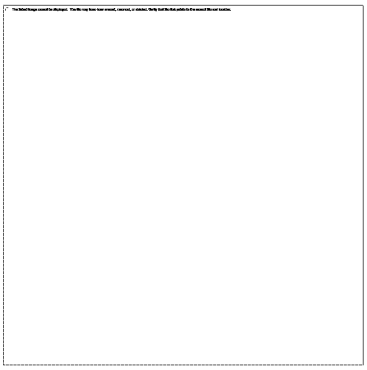
October 2, 2018

Our Call is Beginning NOW

Courthouse Steps: *Gundy v. United States* Oral Argument

Criminal Law & Procedure, Federal Separation of Powers, and Administrative Law Practice Groups Teleforum

Tuesday, October 2, 2018 | 2:00 p.m. ET



Todd F. Gaziano
Chief of Legal Policy and Strategic Research
Pacific Legal Foundation

Since 1789, the Supreme Court has struck down only two laws on "nondelegation" grounds, both in 1935. *Gundy v. United States* will potentially be a third such ruling, depending on whether the Deputy Solicitor General can convince the justices to save the delegation of authority in the Sexual Offence Notification Act (SORNA). The particular provision of SORNA at issue, which directs the Attorney General to decide whether SORNA's registration requirements apply to sexual offenders convicted before the Act's passage, may allow the Court to issue a narrow or broad ruling, but any opinion applying the nondelegation doctrine is likely to be a landmark ruling. The case directly affects three of the Federalist Society's practice groups, and the case indirectly affects almost every other area of federal law.

The nondelegation doctrine operates to prevent Congress from delegating the lawmaking power the people vested in it to another branch or any other entity, but what is the core lawmaking power that Congress cannot delegate? How broadly can Congress phrase its legislation, and how much can it delegate to the regulatory agencies to fill in? The courts' role in enforcing the constitutional delegation line is even more hotly debated. No justice has disagreed that the nondelegation rule is essential to maintaining the constitutional Separation of Powers, but some have expressed concern in prior decades about a judicially manageable standard for the courts to apply. In recent years, the Court's lax enforcement of its "intelligible principle" standard from 1928 has been criticized by Justice Thomas, then Judge Gorsuch and many other commentators. The *Gundy* case presents the Court with a range of options, including from amici who have asked the Court to provide teeth to its intelligible principle standard or to adopt a textually-based standard that would more fully restore the delegation doctrine. How far will the majority go to revive the nondelegation rule, and will concurring justices urge additional movement in the same direction? Or will the doctrine, now on life support, be further diminished?

Dial 888-752-3232 to Participate

Speaker Biography

Todd Gaziano

Todd Gaziano joined PLF in 2014. He now serves as Chief of Legal Policy and Strategic Research, and also directs PLF's Center for the Separation of Powers. Todd has served in all three branches of the federal government, worked in the private sector, and is a well-known scholar and leader in the liberty legal movement.

Todd attended the University of Chicago Law School, where he was a John M. Olin Fellow in Law and Economics. His public law work includes service as a law clerk for U.S. Fifth Circuit Judge Edith Jones, in the U.S. DOJ Office of Legal Counsel, as a chief subcommittee counsel in the U.S. House of Representatives, and as the founding director of The Heritage Foundation's Legal Center. He also had a six-year term as commissioner on the U.S. Commission on Civil Rights, where he reported on civil rights developments and conducted oversight and investigations of civil rights agencies. Early in his career, he was as a litigator in Houston, and more recently, was the Executive Vice President and Chief Legal Officer of an innovative healthcare delivery and IT company.

Todd is a frequent legal commentator in print, on radio and TV, before congressional committees, and in other public settings. With more than 20 years in the liberty movement, Todd continues to publish scholarly papers and op-eds on constitutional and legal reform topics. He has a special interest in the constitutional limits of government, especially the separation of powers, and protections for individual rights. Several of his scholarly articles have influenced landmark Supreme Court litigation, congressional policy, and presidential actions. He also has worked to increase the effectiveness of many organizations within the freedom-based public interest legal movement.

Todd and his wife, also a practicing attorney, reside in Northern Virginia and are proud of their liberty-minded daughter, who is studying at the Antonin Scalia Law School to continue the family trade.

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To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Starting Now: Courthouse Steps Oral Argument: Gundy v. United States

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October 2, 2018

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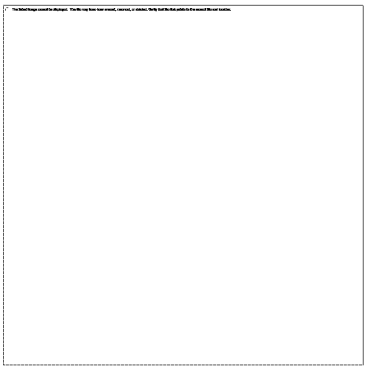

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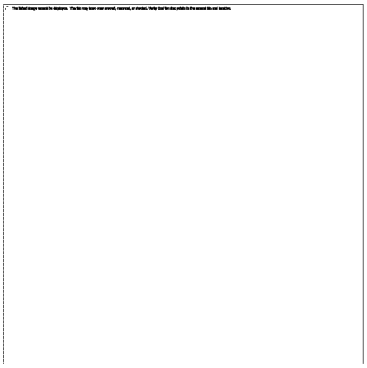

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Sent: 1/11/2019 3:20:57 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: [SPAM-Sender] He saw his election in the snow covered hills, 'til the fear of a landslide brought him down.

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In the Pipeline

MORNING ENERGY NEWS | 1.11.2019

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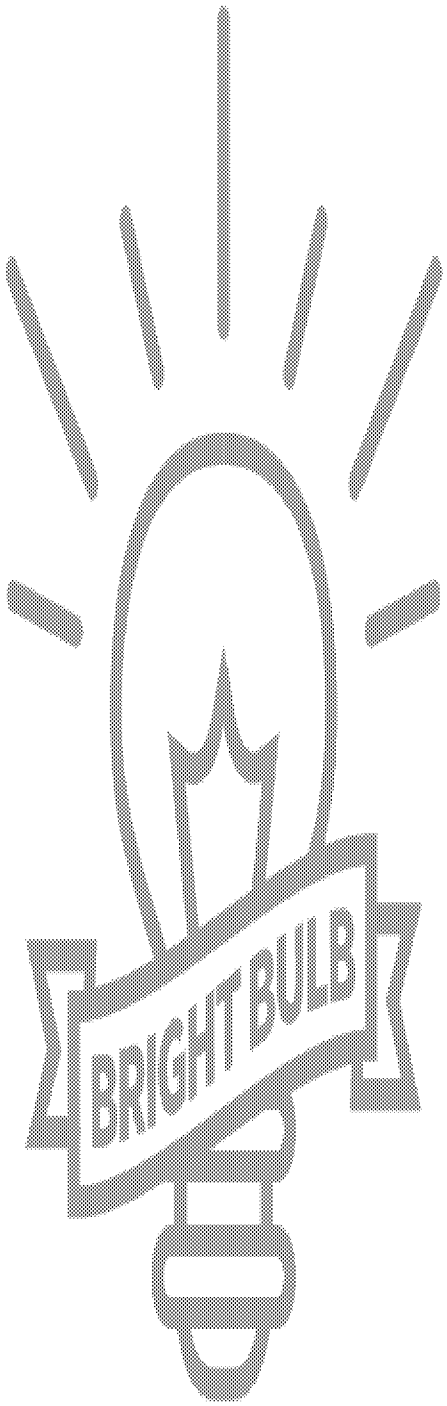
Almost makes you think Americans didn't respond positively to a billionaire telling them to live with less.

Washington Examiner (1/9/19) reports: "Tom Steyer, the billionaire hedge fund manager and environmentalist who has been pushing for President Trump's impeachment, will not be running for president in 2020. Steyer, 61, whose "Need to Impeach" petition to oust Trump from the White House has amassed almost 6.7 million signatures, won't contest the Democratic Party's presidential nomination, spokeswoman Aleigha Cavalier told the Washington Examiner...Steyer's decision comes after he invested $120 million ahead of the 2018 elections to support Democratic candidates. After posting an advertisement on LinkedIn in December seeking staff, he had hired a campaign manager, conducted polling, and poached former Massachusetts Gov. Patrick Deval's top adviser, the New York Times reported. The newspaper reported on

Wednesday he would instead give $40 million to further his impeachment efforts."



"(T)here is one unassailable fact about the Green New Deal: It is not green. Indeed, the entire notion of an all-renewable-energy system is the antithesis of environmental protection and scenic conservation. The backers of the Green New Deal — along with their allies at big environmental groups such as the Sierra Club, Greenpeace, and others that tout all-renewable schemes — refuse to acknowledge the simple truth that deploying renewable energy at the scale required to fuel the U.S. economy would require covering state-sized territories with nothing but wind turbines and solar panels."

– Robert Bryce, Manhattan Institute

Health, wealth, innovation, energy security, and the weakening of petro-dictators? Sounds remarkably like the Shale Revolution.

New York Times (1/8/19) column: "To keep it simple, my goals would be what energy innovator Hal Harvey has dubbed 'the four zeros.' 1. Zero-net energy buildings...2. Zero-waste manufacturing...3. A zero-carbon grid...4. Zero-emissions transportation: a result of combining electric vehicles and electric public transportation with a zero-carbon grid. That's my Green New Deal circa 2019. It basically says: Forget the Space Race. We don't need a man, or woman, on Mars. We need an Earth Race—a free-market competition to ensure that mankind can continue to thrive on Earth. A Green New Deal is the strategy for that. It can make America healthier, wealthier, more innovative, more energy secure, more respected—and weaken petro-dictators across the globe."

The story of my life. No respect.

New York Times (12/24/18) feature: "Overall, fossil fuels still dominate electricity generation in the United States. But the shift from coal to natural gas has helped to lower carbon dioxide emissions and other pollution. Last year, coal was the main source of electricity generation for 18 states, down from 32 states in 2001. But experts warn that a shift to natural gas alone won't be enough to curb emissions and avoid dangerous global warming. 'Switching from coal to gas is a fine thing to do in the short run, but it's not a solution in the longer run,' said Severin Borenstein, Director of the Energy Institute at the University of California Berkeley's Haas School of Business."

Time to put on our yellow vests.

Washington Examiner (1/10/19) reports: "U.S. Chamber of Commerce President and CEO Tom Donohue called Thursday for Congress and President Trump to enact a major infrastructure bill this year, a goal that would face resistance from some Republicans. 'We are calling on our leaders to pass a

significant infrastructure package this year,' Donohue said during his annual state of American business speech. Donohue said that the Chamber will push for an increase in the gas tax in order to pay for new building and transit projects and that the group believes Congress would have the votes to pass legislation to that effect."

Lighten up, Francis.

E&E News (1/11/19) reports: "Republican Rep. Francis Rooney holds one of the reddest seats in Florida, but that hasn't stopped him from supporting aggressive climate action. And he thinks President Trump should, too. Rooney is a rare Republican who's pushing for a carbon tax, and he also wants to end the use of coal. Unlike other GOP lawmakers who are pushing for a price on greenhouse gases — there are just a few — Rooney wasn't endangered in last year's midterm elections...Rooney has also been outspoken against offshore drilling in the Gulf of Mexico. He introduced a bill last year to permanently ban offshore drilling in the eastern Gulf. He reintroduced this month."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance
Myron Ebell, Competitive Enterprise Institute
Phil Kerpen, American Commitment
William O'Keefe, George C. Marshall Institute
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Joe Bast, Heartland Institute
David Ridenour, National Center for Public Policy Research
Grover Norquist, Americans for Tax Reform
Sabrina Schaeffer, Independent Women's Forum
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Rich Collins, Positive Growth Alliance
Craig Richardson, E&E Legal
The Honorable George Allen, American Energy Freedom Center
Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $52.84
Natural Gas: ↑ $3.01
Gasoline: ↑ $2.24
Diesel: ↓ $2.94
Heating Oil: ↑ $191.07
Brent Crude Oil: ↑ $61.82
US Rig Count: ↓ 1098

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Subject: A perfect complement to underwater basketweaving.

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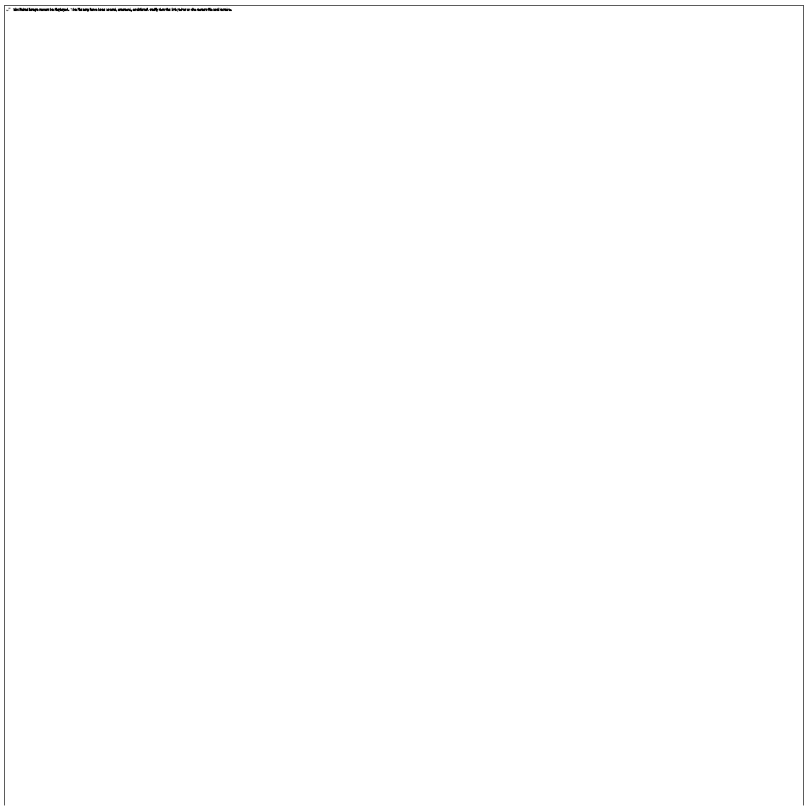
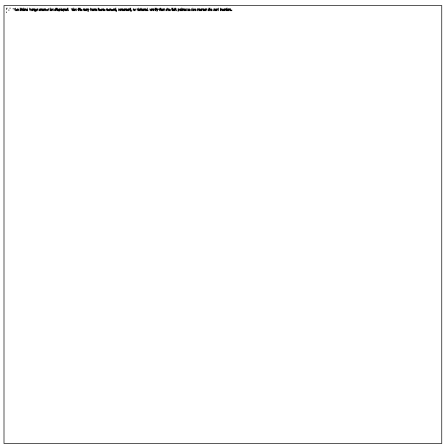
China's universities are pumping out thousands of engineers each year. Meanwhile in the United States...

Campus Reform (1/3/19) reports: "The University of Massachusetts-Dartmouth has an online 'ecofeminism' course in which students can learn about topics like 'the oppression of nature.' 'Ecofeminism: Philosophy & Practice,' a three-credit course, is being offered by the university during the 2019 spring semester and the school is charging students $1,218, not including a term registration fee, to take the course, which seeks to study different ecofeminist theories. The course covers the 'study of ecofeminism as systems of oppression based on race, class, gender, sexuality, and ethnicity that stem from a cultural ideology that enables the oppression of nature,' according to its description. 'The course explores ecofeminist theories, literature, and practice, including ecofeminist ethics, and the applications of ecofeminism to the lives of individual men and women, as well as cultural institutions and organizations.'"





"This time the generating utilities are proposing to go way beyond adding capacity. They also want to shut down perfectly good generators, to make room for a huge buildup of wind and solar (plus battery storage). This is a clear prescription for disaster because you cannot substitute intermittent wind and solar for reliable coal and gas."

– David Wojick, CFACT

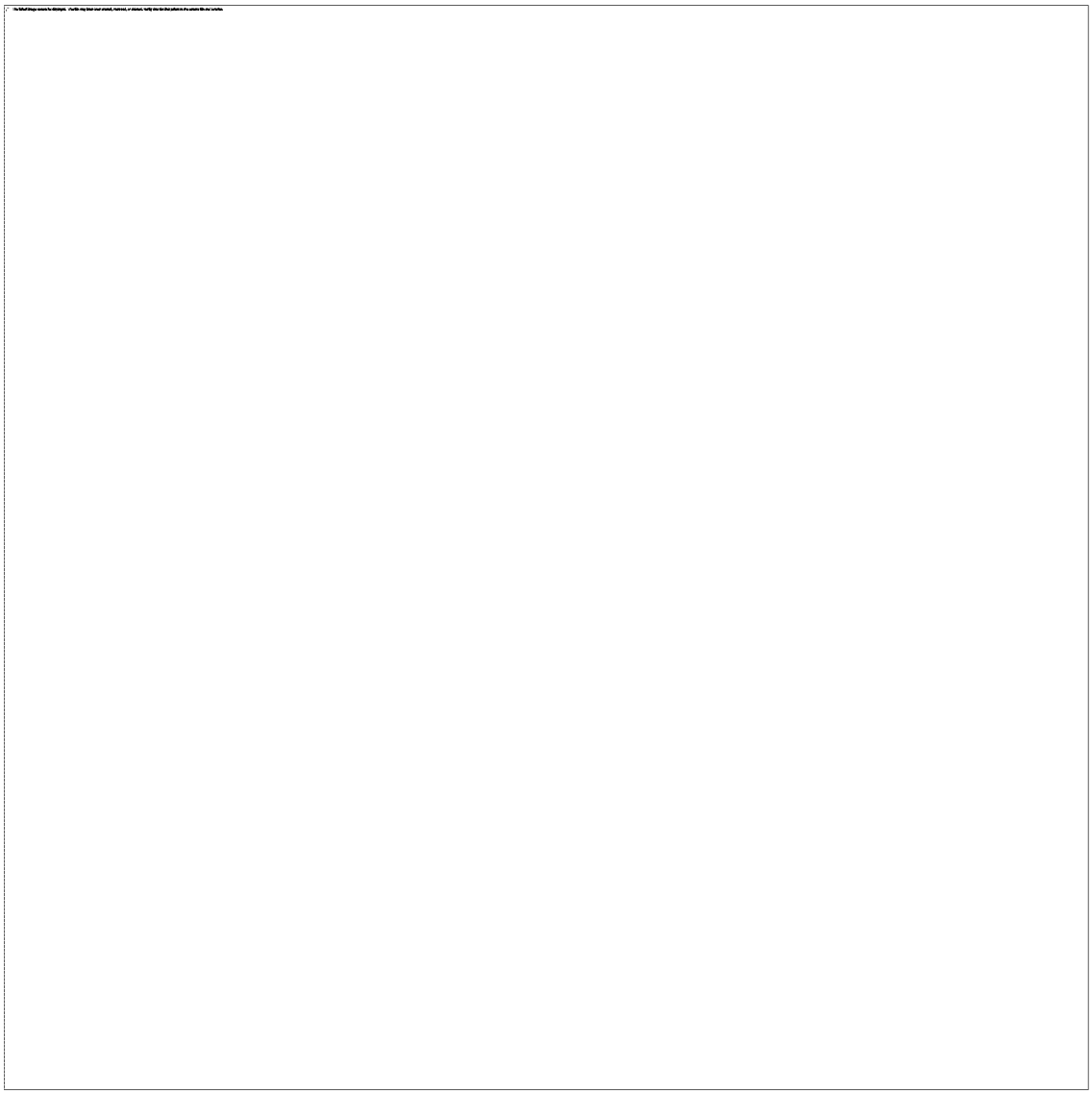
People still take cabs?

E&E News (1/3/19) reports: "In the long row of bright-red taxis queued up at Washington's Union Station on a recent morning, a cab sporting a bright-green 'e' stood out. That's 'e' for electric. District of Columbia officials and

environmentalists have celebrated the city's electric cab fleet as a weapon against climate change. But a largely immigrant corps of taxi drivers who are struggling to compete against ride-hailing services like Uber and Lyft say the program has stuck them with a hefty tab for environmental progress. 'We are suffering because of this car,' said Tsegaye Mamo, a cab driver from Ethiopia. 'This car is not good for business.'...The drivers — most of them immigrants — say they didn't understand the difficulties and expense of owning and operating an electric cab. While the Department of For-Hire Vehicles dangled $10,000 grants to cover the cost of new electric vehicles and lure drivers, many cabbies said they either didn't receive the grant or are still paying off loans for the car. 'I don't know why they forced us to buy this car,' said Mesfia Tesfaye, who came to the United States from Ethiopia nine years ago. 'It is very hard.'"

Trudeau? All for show.

Toronto Sun (1/1/19) video: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Might as well have ratepayers subsidize their lattes too.

E&E News (1/3/19) reports: "Utilities seeking to push electric vehicle sales have begun offering lower "startup" electricity rates as an incentive for operators of high-speed charging stations, a study for the Edison Electric Institute reports. High-voltage charging for the new generation of EVs can shorten battery replenishment time to a pit stop for coffee instead of an aggravating half-hour-plus connection, blunting the range anxiety that deters potential EV buyers, said the paper released yesterday by EEI, authored by Brattle Group researchers Ryan Hledik and Jurgen Weiss."

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Joe Bast, Heartland Institute

David Ridenour, National Center for Public Policy Research
Grover Norquist, Americans for Tax Reform
Sabrina Schaeffer, Independent Women's Forum
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Rich Collins, Positive Growth Alliance
Craig Richardson, E&E Legal
The Honorable George Allen, American Energy Freedom Center
Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $48.12
Natural Gas: ↑ $3.01
Gasoline: $2.25
Diesel: $2.98
Heating Oil: ↑ $177.74
Brent Crude Oil: ↑ $57.25
US Rig Count: ↑ 1108

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Subject: Did you catch this?

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MORNING ENERGY NEWS | 5.3.2019

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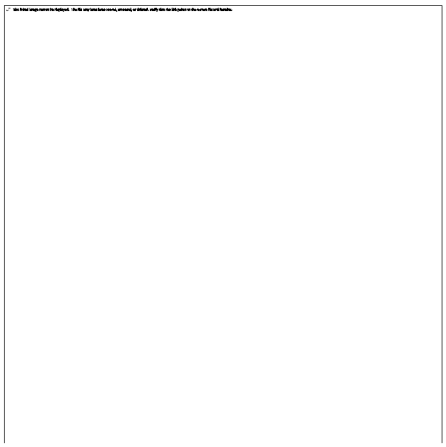
Traveling buddies Whitehouse and Graves tour Louisiana together.

E&E News (5/2/19) reports: "After delivering more than 200 Senate floor speeches warning Americans it's 'time to wake up' to the risks of climate change, Sen. Sheldon Whitehouse hit a key milestone Tuesday in his yearslong campaign: He was joined by a Republican. 'This is a big moment for me to have this be the first bipartisan 'Time to Wake Up,' the Rhode Island Democrat said, referencing the presence of Republican Sen. Bill Cassidy. Louisiana's senior senator had just delivered his own remarks about Whitehouse's visit to the Bayou State where he saw firsthand the vanishing coastline. Cassidy has in recent years positioned himself as a climate-conscious Republican. He did not shy away from the association, referencing Whitehouse's infamous 'wake up' poster during his own speech...During his visit, Whitehouse was joined by Rep. Garret Graves (R-La.), the one-time chairman of Louisiana's Coastal Protection and Restoration Authority and current ranking member on the House Select Committee on the Climate Crisis."



"We are trying to save the people of the planet from the people 'saving the planet.'"

– Dr. Caleb Rossiter, CO2 Coalition

Am I supposed to feel bad about this?

Seattle Post-Intelligencer (5/2/19) reports: "How long would you say is reasonable time for an auto body shop to fix a car with light body and suspension damage? Two weeks? A month? Two months? Craig Hedges was driving on the Stanford campus on Oct. 27, 2018, when a Toyota Corolla pulled

out from a parking space and plowed into his 2016 Tesla Model S. Neither vehicle was moving very fast, but the Tesla sustained front fender and suspension damage and wasn't drivable. So the Burlingame resident had it towed a few days later to Chilton Auto Body in San Carlos, the nearest Tesla-approved body shop and the preferred shop of his insurer, Allstate. Nearly six months later, he says his Model S still hasn't been repaired. 'When my car got in an accident, it was somewhere in the thirties to be worked on and the last time I had a conversation with someone there a few weeks ago, there was well over 130 Teslas there to get fixed,' Hedges said. 'Now I think if you're number 130 [in line to get fixed], it's going to be well over a year to get your car back.'"

Shot...

Daily Caller (5/2/19) reports: "The U.K. is in the grip of a climate change panic. Weeks of incessant protests and alarming rhetoric culminated in U.K. lawmakers declaring a "climate emergency.' For 10 days in April, protesters with the group Extinction Rebellion occupied public squares, blocked London traffic and even glued themselves to benches calling on the government to declare a 'climate emergency.'...Parliament declared a 'climate emergency' Wednesday and called on the government to mandate the U.K. hit 'net-zero' greenhouse gas emissions by 2050 — the motion is non-binding, thus does not

actually obligate the government to act. 'This can set off a wave of action from parliaments and governments around the globe,' Labour Party Leader Jeremy Corbyn told protesters gathered outside Parliament Wednesday, BBC reported."

Chaser...

Sky News (5/2/19) reports: "The majority of Britons are unwilling to significantly reduce the amount they drive, fly and eat meat in order to combat climate change, a Sky Data poll reveals. Just over half - 53% - say they would be unwilling even in principle to significantly reduce the amount they fly, while 28% say they would be willing to give up travelling by plane or reduce the amount they do so significantly (19% say they never fly anyway)...Some 56% say they would be unwilling to drive significantly less to protect the environment, with 28% saying they would be willing to reduce the amount they drive significantly or give it up entirely (17% already do not drive)."

Thank you, Steve, for your honorable run for the Fed. The elites in the Keynesian establishment will never allow someone with your infectious optimism and willingness to take them on into their club.

Wall Street Journal (5/2/19) op-ed: "When President Trump asked me to serve as a member of the Federal Reserve Board, I was honored. I never imagined the storm that would follow. The left and the media instantly launched a relentless campaign against me. Last week a reporter who has covered the Fed for 30 years told me he'd never seen anything like it. On Thursday I reluctantly threw in the towel and asked the president not to nominate me."

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Isaac Orr, Center of the American Experiment
David T. Stevenson, Caesar Rodney Institute
John Droz, Alliance for Wise Energy Decisions
Hon. Tim Huelskamp, Ph.D., The Heartland Institute
Mark Mathis, Clear Energy Alliance

Energy Markets

WTI Crude Oil: ↑ $61.87
Natural Gas: ↑ $2.61
Gasoline: ↑ $2.90
Diesel: $3.10
Heating Oil: ↓ $206.96
Brent Crude Oil: ↓ $70.57
US Rig Count: ↓ 1032

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on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 9/14/2018 3:22:39 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Think your EV is a ticket to heaven?

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In the Pipeline

MORNING ENERGY NEWS | 9.14.2018

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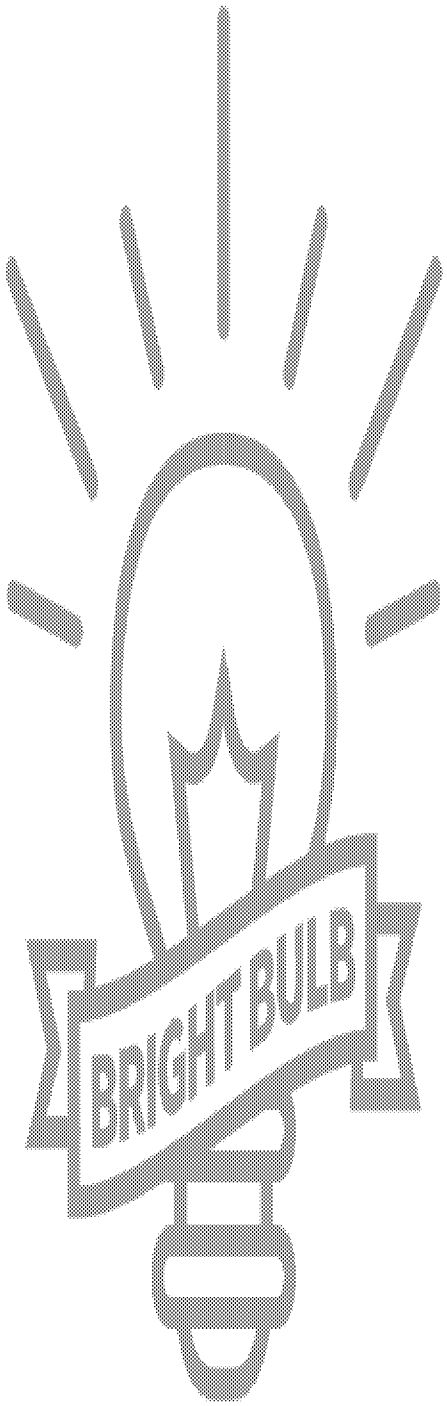
Think again.

Wall Street Journal (9/13/18) feature: "Apple Inc., Volkswagen and about 20 other global manufacturers found themselves on the defense when Amnesty International reported two years ago that the cobalt in some of their batteries was dug up by Congolese miners and children under inhumane conditions. Many of the companies said they would audit their suppliers and send teams to Congo to fix the problem. Their efforts haven't kept hand-dug cobalt out of the industry supply chain...The mine's owner is part of the global cobalt supply chain for companies including Apple and VW...Miners there were using picks, shovels and bare hands to unearth rocks rich with the metal. Water sometimes rushes into holes and drowns miners, and an earth mover buried one alive last year, said local creuseurs and mine officials. 'Of course, people die,' said Christian Schöppe, then acting chief executive of the Mutoshi mine's owner, Chemaf SARL, in May. 'This is really shitty work.' He called the miners 'barbarians' and said Chemaf had resisted giving them safety equipment

because they would sell it. Global demand is soaring for cobalt, which is used to conduct heat in lithium-ion batteries in products from smartphones to electric vehicles."



"Never in its history has the domestic oil industry produced as much oil as it now does every day. In 2017, U.S. net imports of crude oil amounted to just 19 percent of the country's daily consumption. Thus, while the country has not become completely energy independent, it has become vastly more energy secure. None of this happened by accident - it has taken place due to a combination of human ingenuity, good public policy and the luck of geology."

– David Blackmon, Forbes

My heart goes out to the working men and women of New York City. Your mayor is stealing your pension.

The Hill (9/13/18) reports: "New York City Mayor Bill de Blasio (D) on Thursday will announce a plan for the city to invest $4 billion of its pension funds into clean renewable energy and other climate-focused projects, according to the Wall Street Journal reported. The investment amount, which is more than double the city's current commitment, will span three years. The overall pension fund totals about $195 billion."

Shameless. Oh, and not libertarian.

E&E News (9/13/18) reports: "A right-leaning think tank is again wading into the debate over landowner rights and oil and gas pipelines. The Niskanen Center

filed an amicus brief Tuesday urging the U.S. Court of Appeals for the District of Columbia Circuit to side with opponents to the Mountain Valley pipeline, a natural gas project that stretches across West Virginia and Virginia. Niskanen's brief argues that the Federal Energy Regulatory Commission's approval process for gas pipelines routinely violates landowners' constitutional rights."

Sad!

GreenTech Media (9/11/18) reports: "The U.K.'s wind industry is cautiously responding to data showing poor project performance during a balmy summer. Luke Clark, head of external affairs at the wind industry body RenewableUK, said his organization is awaiting official second-quarter energy figures, due out Sept. 27, before declaring an official position on news articles published last month. *The Guardian*, for example, reported that calm, sunny weather had seen wind's share of summer electricity generation dropping to 10.4 percent from 12.9 percent a year ago, forcing gas turbines to step into the breach."

You cannot deny #science. They don't make 'em like Bullet Bob anymore.

YouTube:

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Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $68.84

Natural Gas: ↓ $2.81

Gasoline: ↑ $2.85

Diesel: $3.18

Heating Oil: ↑ $222.47

Brent Crude Oil: ↑ $78.33

US Rig Count: ↓ 1127

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Subject: Energy lessons from 2018

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In the Pipeline

MORNING ENERGY NEWS | 12.28.2018

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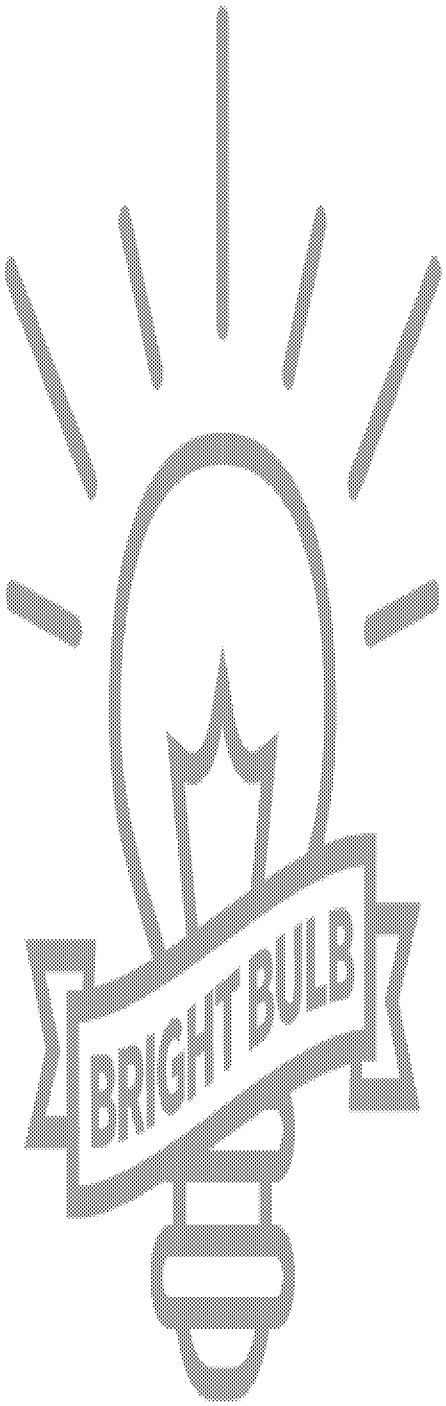
We've parried the carbon tax. Now we prepare for the next thrust.

New York Times (12/27/18) column: "In the final analysis, the economic theory is right, of course: We do need a price on carbon. Some of our most important goals, such as cutting emissions from heavy industries like steel mills and cement plants, are likely to be impossible to achieve without it. But just because a stiff carbon price is, in theory, the biggest tool in the toolbox, I am not sure that means we have to whip it out first. Many other tools are available. A policy known as a clean-electricity standard, which would require that a certain share of electricity generation come from low-carbon sources, could get us a long way in the United States. Republicans have shown some interest in it in the past. Stricter building regulations are also needed the world over. Maybe we need to use those techniques to convince people that emissions really can be cut without wrecking the economy or further impoverishing the working class. Then, having proved that, we would pull the big tool out last."

BBC
VERSAGUES



"The more Canadians learn about Prime Minister Justin Trudeau's plan to force a carbon tax on every corner of the country, the less they like it. It's a phenomenon that echoes what happened in Australia in 2014, when its government repealed a much-despised carbon tax after it had been in place for just two years."

—Toronto Sun Editorial Board

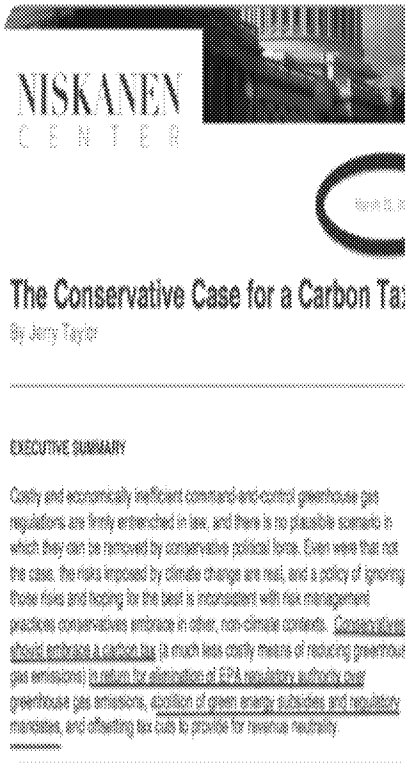
Well, this is awkward.

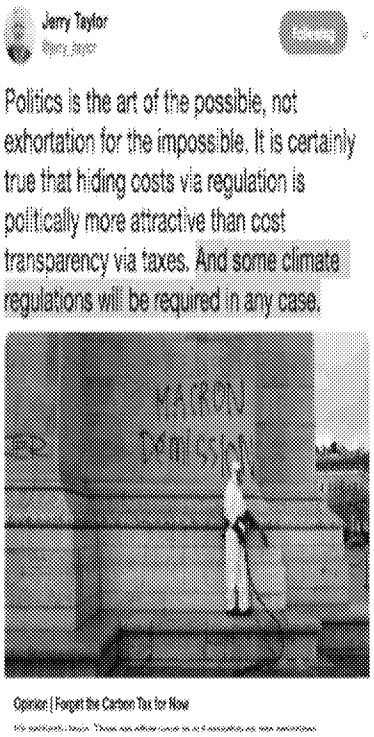
Twitter (12/27/18):

Robert P. Murphy
@BobMurphyEcon

Following

Wow it's a good thing conservatives didn't take @jerry_jtaylor's advice to embrace a carbon tax in exchange for eliminating regulations on emissions. Taylor himself would have shown them the folly of their ways 3 years later on Twitter.



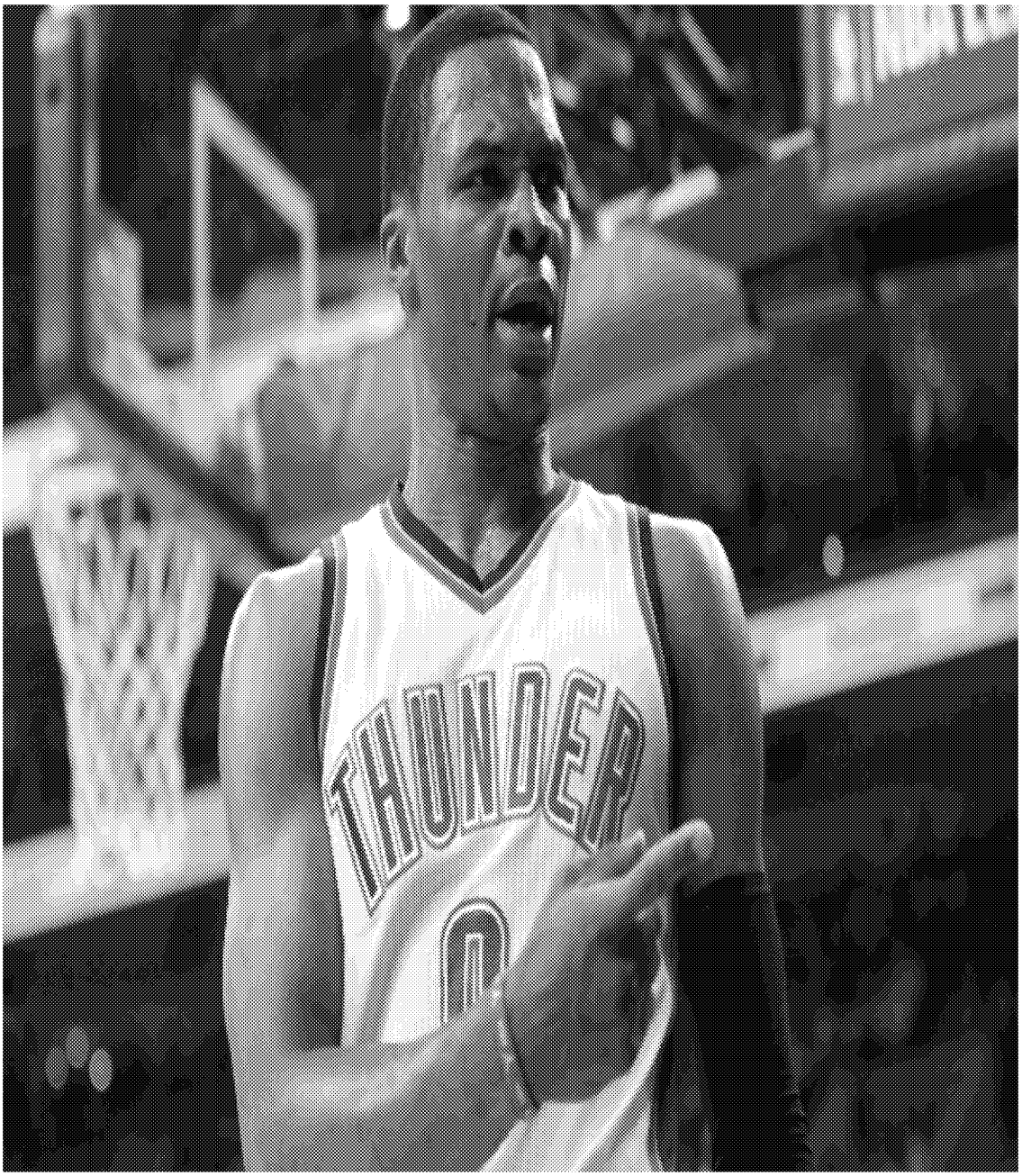


1:58 PM - 27 Dec 2018

8 Retweets 20 Likes

Whose man is this?

The Hill (12/27/18) op-ed: "When principles meet economics, principles lose. That is the lesson coming from three prominent setbacks to policies intended to target climate change. These sobering results remind us how little people are willing to pay for professed principles ... and ominously how much government is required in order to make them do so."


THUNDER
0

No Moe Mr. Nice Guy

Canadian Press (12/26/18) reports: "Scott Moe is almost one year into his tenure as Saskatchewan premier and he has used his opposition against a federal carbon tax as a major front in the early battle to define his leadership. Moe points to the pending tax as one of the biggest economic headwinds facing his province. Since replacing Brad Wall as premier at the end of January, he has asked the Saskatchewan Court of Appeal to rule on whether the federal government's plan to impose one on the province is constitutional."

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Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $45.68

Natural Gas: ↑ $3.64

Gasoline: ↓ $229

Diesel: ↓ $3.01

Heating Oil: ↑ $170.20

Brent Crude Oil: ↑ $53.21

US Rig Count: ↑ 1122

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Subject: Cutting the CARB

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MORNING ENERGY NEWS | 2.22.2019

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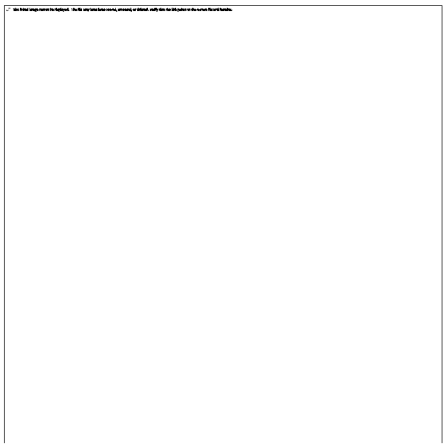
The time for honoring yourself will soon be at an end, Mary.

Daily Caller (2/21/19) reports: "The Trump administration officially ended negotiations with California over a proposed rollback of Obama-era fuel economy regulations. The White House issued a joint statement with the Environmental Protection Agency (EPA) and Department of Transportation (DOT) Thursday: 'Today, officials from the White House, Department of Transportation, and Environmental Protection Agency announced that the Trump Administration has decided to discontinue discussions with the California Air Resources Board (CARB) regarding the proposed Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule. Despite the Administration's best efforts to reach a common-sense solution, it is time to acknowledge that CARB has failed to put forward a productive alternative since the SAFE Vehicles Rule was proposed.'"



"How could the market price in the cost of providing rapid replacement energy that renewable sources can't provide reliably? (T)he power industry—to say nothing of the Green New Dealers—hasn't given this much thought. An all-renewables power grid is destined to collapse."

– Robert Blohm, North American Electric Reliability Corp.

Dick Durbin Diss Track

The Hill (2/20/19) reports: "Sen. Dick Durbin (D-Ill.) on Wednesday declined to say if he will vote for the 'Green New Deal' resolution, saying that after he read it he asked a key sponsor of the legislation...'At this point,' [Durbin said] 'I would

be — I can't tell ya, to be honest with you. I've read it, and I've reread it. And I asked Ed Markey what in the — what in the heck is this?"

Inslee can't even pass a carbon tax in his own state. Good luck in Trump Country.

Politico (2/1/19) reports: "Close allies of Washington Gov. Jay Inslee have created a super PAC to support his presidential campaign, with Inslee expected to jump into the 2020 Democratic primary soon. The unlimited-money group, called Act Now On Climate, was formed by veteran Democratic operative Corey Platt, former political director of the Democratic Governors Association. Inslee chaired the governors group in 2018, when he traveled the country campaigning for Democratic governors and introducing himself in key states."

When your people are suffering through acute water shortages, the best course of

action is to create an acute energy shortage as well...

Climate Change News (2/20/19) reports: "South Africa is on course to put a price on carbon pollution, after the National Assembly passed a long-awaited Carbon Tax Bill on Tuesday. The tax will start at 120 rand ($8) a tonne of carbon dioxide, although various free allocations reduce the effective rate to R6-54/t, depending on the industry. In his budget speech on Wednesday, finance minister Tito Mboweni also announced funds to restructure ailing state-owned utility Eskom, which owns most of the country's coal plants. 'The sustainability challenge affects us all. Climate change is real. The steps being undertaken at Eskom will allow us to expand renewable energy, and the carbon tax will come into effect from 1 June 2019,' said Mboweni."

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David Williams, Taxpayers Protection Alliance
Paul Gessing, Rio Grande Foundation
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Hon. Tim Huelskamp, Ph.D., The Heartland Institute
John Droz, Alliance for Wise Energy Decisions

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Natural Gas: ↓ $2.68
Gasoline: ↑ $2.39
Diesel: ↑ $2.96
Heating Oil: ↓ $203.61
Brent Crude Oil: ↑ $67.25
US Rig Count: ↑ 1079

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In the Pipeline

MORNING ENERGY NEWS | 4.5.2019

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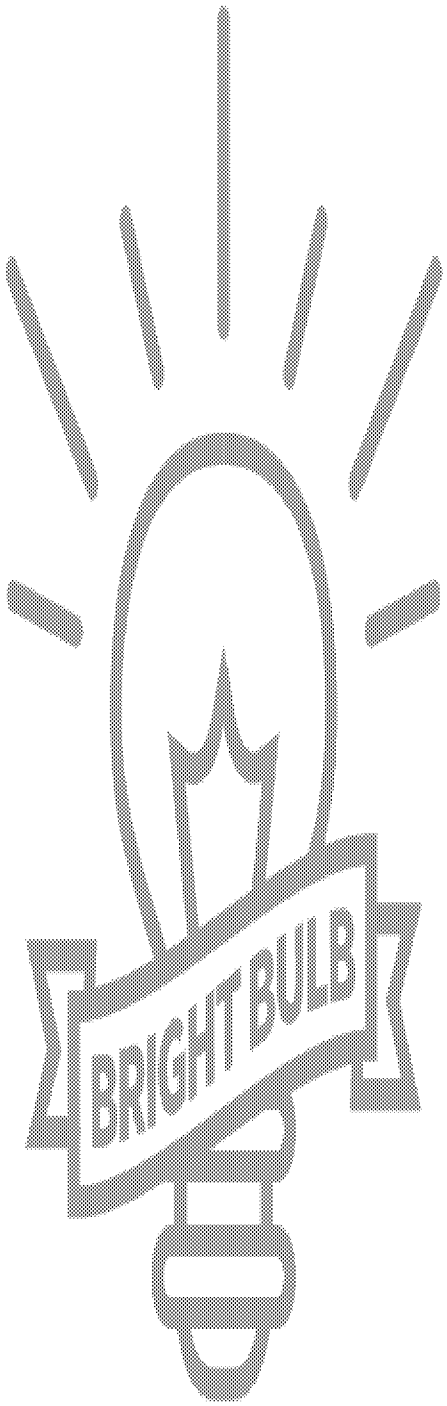
You cut its head off once, it simply grows another.

McClatchy (4/3/19) reports: "The Trump administration and congressional Democrats have found something they agree on — and it could mean higher taxes on gasoline and diesel fuel. Last week, President Donald Trump's transportation secretary, Elaine Chao, told senators that a gas tax hike was on the table when asked whether the White House would support such a move. And this week, Democrats are indicating that they too are ready to consider a tax increase — an effort that would fund publicly popular infrastructure improvements but has hit a hard wall of opposition for years from fiscal conservatives and advocates for low-income people alike. 'I don't think it should be off the table,' Rep. Pramila Jayapal, a Washington Democrat and co-chair of the Congressional Progressive Caucus, told McClatchy when asked about the prospect of the increase. The caucus has taken no formal position. Several important, difficult steps remain before the current tax, 18.4

cents a gallon for gasoline and 24.4 cents a gallon for diesel fuel, would increase. But some sort of infrastructure package is under serious discussion in both the House and Senate by members of both parties, and Trump has said he's open to ideas."



"[The shale gas boom] has led to a drastic decrease in heating prices for places that heat more with natural gas. A statistical comparison of winter time deaths in areas that experienced larger decreases in heating costs due to natural gas being more important shows that the shale gas driven price decline led to 11,000 (!!!!) fewer winter time deaths per year."

– Maximilian Auffhammer, *Energy Institute at Haas*

Because apparently being a climate denier is the same as being racist.

Washington Examiner (4/4/19) reports: "Rep. Alexandria Ocasio-Cortez D-N.Y., called out people who are resistant to extreme action to address climate change Wednesday, comparing them to their grandparents who protested the Civil Rights Movement. 'How many years until the world ends again? We have 12 years left to cut emissions by at least 50% if not more,' said Ocasio-Cortez as she crouched on the ground, looking at the camera and eating a snack while on Instagram Live. 'For everyone who wants to make a joke about that, you may laugh but your grandkids will not.' Ocasio-Cortez said a lot of Americans are hiding their families' past history opposing the civil rights movement."

More proof that climate activists care less about the climate than they do hating fossil fuels.

BBC (4/3/19) reports: "British Columbia-based Carbon Engineering has shown that it can extract CO2 in a cost-effective way. It has now been boosted by $68m in new investment from Chevron, Occidental and coal giant BHP. But climate campaigners are worried that the technology will be used to extract even more oil... Some climate campaigners are positive about the development of direct air capture technology, but others are worried that it will be used to prolong the fossil fuel era. 'It's a huge concern,' Tzeporah Berman, international

programme director for Stand dot earth, told BBC News. 'We need to be working together to figure out how we move away completely from fossil fuel - that's our moral and economic challenge but these technologies provide a false hope that we can continue to depend on fossil fuels and produce and burn them, and technology will fix it - we are way past that point!'"

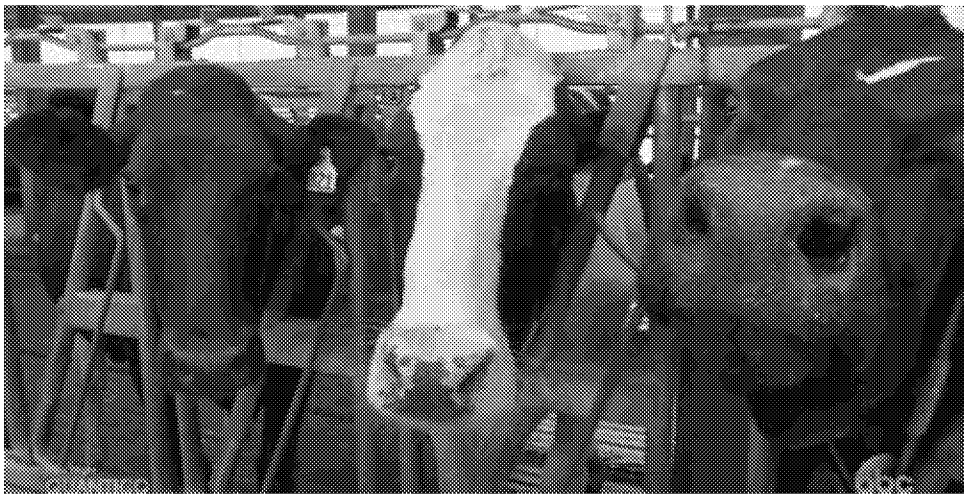
The Big Easy is putting the squeeze on its golden goose.

Washington Examiner (4/3/19) reports: "[New Orleans Mayor LaToya Cantrell] has pushed the city to join a series of ludicrous lawsuits filed by numerous Louisiana parishes (the equivalent of counties) against oil and gas companies for supposedly causing coastal wetlands erosion. The lawsuits are a typical example of a short-sighted, dim-witted attempt to kill the golden goose. For a full century, Louisiana has benefited from oil and gas exploration to the tune of hundreds of thousands of jobs and hundreds of billions of dollars, including many tens of billions in tax revenue for state and local governments. The state welcomed the energy industry with open arms; the state and federal governments both regulated and oversaw the industry; and both expressly permitted the fuel pipelines through the marshlands that now are the subject of the lawsuits. Yet now the state's constituent parishes want to make the industry

pay for wetlands destruction, even though the pipelines are only one of the causes — and indeed, not even close to the largest cause — of the coastal erosion."

Udderly ridiculous.

MSN (3/31/19) reports: "Teaching cows to use the toilet is not the easiest task, but a Dutch inventor is banking on a new bovine urinal to help cut emissions that cause environmental damage. Tests have started on a farm in the Netherlands on the device which collects some of the 15 to 20 litres of urine that the average cow produces a day. That produces huge amounts of ammonia in a country like the Netherlands, which is the world's second-biggest agricultural exporter after the United States. 'We are tackling the problem at the source,' Henk Hanskamp, the Dutch inventor and businessman behind the 'Cow Toilet', told AFP Friday. 'A cow is never going to be completely clean but you can teach them to go to the toilet.' The urinal is in a box placed behind the cow, while in front is a feeding trough. Once the animal finishes eating a robot arm stimulates a nerve near the udders, which then makes it want to urinate."



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David T. Stevenson, Caesar Rodney Institute
John Droz, Alliance for Wise Energy Decisions
Hon. Tim Huelskamp, Ph.D., The Heartland Institute

Energy Markets

WTI Crude Oil: ↓ $62.01
Natural Gas: ↓ $2.64
Gasoline: ↑ $2.72
Diesel: ↑ $3.03
Heating Oil: ↓ $200.61
Brent Crude Oil: ↓ $69.14
US Rig Count: ↓ 1049

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From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 3/22/2019 3:27:56 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: It's gonna be cold, it's gonna be gray, and it's gonna last you the rest of your life.

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In the Pipeline

MORNING ENERGY NEWS | 3.22.2019

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Thanks, Andrew.

New York Times (3/21/19) reports: "Across the suburbs north of New York City, clusters of luxury towers are rising around commuter rail stations, designed to lure young workers seeking easy access to Manhattan. In all, 16,000 apartments and condominiums are in the works in more than a dozen towns, along with spaces for restaurants and shops. But the boom unfolding in Westchester County is under threat — not from any not-in-my-backyard opposition or a slumping real estate market. Instead, it is coming from something unexpected: a lack of natural gas. Con Edison, the region's main utility, says its existing network of pipelines cannot satisfy an increasing demand for the fuel. As a result, the utility has taken the extreme step of imposing a moratorium on new gas hookups in a large swath of Westchester, including for residential buildings planned in Yonkers, White Plains and New Rochelle."

"BLM failed to take a 'hard look' at GHG emissions from the Wyoming Lease Sales, and therefore the EAs and FONSIs issued for those sales did not comply with NEPA...(It is) ordered that the nine EAs and FONSIs associated with the Wyoming Lease Sales challenged in Plaintiffs' complaint are remanded REMANDED to BLM."

– Rudolph Contreras, U.S. District Judge

Now this is just downright embarrassing.

Reuters (3/21/19) reports: "U.S. solar and wind power companies may have the most to gain from the Green New Deal, an ambitious proposal backed by several Democratic presidential candidates to end U.S. fossil fuel consumption within a decade. But do not expect the renewable energy firms to endorse it. Representatives of America's clean energy companies are withholding their support for the climate-fighting plan, calling it unrealistic and too politically divisive for an industry keen to grow in both red and blue states.

Land of 10,000 Delays...

St. Cloud Times (3/15/19) op-ed: "In February, Gov. Tim Walz announced his decision to temporarily block a major infrastructure project - the replacement of the "Line 3" oil pipeline that runs across northern Minnesota. The governor framed the delay as commonsense prudence; regulators simply need more time to properly assess the project's environmental effects. 'Minnesotans deserve clarity,' he said. His comments were 'government speak' for 'watch what I say, not what I do.' Line 3 is a much-needed and very worthy infrastructure project. Indeed, this project has already been thoroughly assessed and found safe. Gov. Walz is letting far-left activists' baseless

fearmongering about oil spills inhibit Minnesota's economic growth and job creation."

The upside? Government handouts. The downside? 82 miles of range.

Reuters (3/21/19) reports: "On the outskirts of Oslo, a row of Fiat 500es imported from California stand parked in the snow outside the Buddy Electric dealership, part of a global flow of pre-owned electric cars to Norway powered by green subsidies elsewhere in the world...Norway has the world's highest rate of electric car ownership in the world, partly thanks to long-term perks such as free or discounted road tolls, parking and charging points, which boost the appeal of second hand models unwanted elsewhere. The government also exempts electric vehicles from taxes on traditional vehicles that are very high in a country which does not have its own fossil fuel car industry to lobby against them. Rebates offered by other countries are another part of the equation. In California, residents who own a new battery electric car for at least 30 months can get a rebate of up to $4,500, said John Swanton, of the California Air Resources Board. The Fiats show how varying incentives around the world to promote electric cars, spurred by efforts to combat climate change and limit air pollution, can affect trade flows."

I think this is the beginning of a beautiful friendship.

The Economist (3/16/19) feature: "A giant hotel in Houston teemed with oil-and-gas executives on March 11th, the start of a ceraWeek. ihs Markit, a research firm which organised the shindig, lined up America's energy secretary, the chief executives of bp and Chevron (two of the world's largest oil companies), and other luminaries. Among the dark suits was an open-collared newcomer: Andy Jassy, head of Amazon Web Services. Speaking to a vast ballroom, he extolled the cloud-computing giant's virtues of moving quickly and learning from failure. Mr Jassy was there not just to offer management advice to what were once the world's most valuable companies. He was also after their custom. Energy companies are keen to produce oil and gas more efficiently, as they grapple with volatile prices and uncertain long-term demand. Digital investments promise to cut costs and boost output. Tech giants like Amazon, Microsoft and Alphabet, as well as a clutch of startups, want to help."

If you oppose a carbon tax, please contact us and take a stand.

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Myron Ebell, Competitive Enterprise Institute

Phil Kerpen, American Commitment

Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity

Grover Norquist, Americans for Tax Reform

George Landrith, Frontiers of Freedom

Thomas A. Schatz, Citizens Against Government Waste

Richard Manning, Americans for Limited Government

Adam Brandon, FreedomWorks

Craig Richardson, E&E Legal

Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute

Jason Hayes, Mackinac Center

David Williams, Taxpayers Protection Alliance

Paul Gessing, Rio Grande Foundation

Seton Motley, Less Government

Nathan Nascimento, Freedom Partners Chamber of Commerce

Isaac Orr, Center of the American Experiment

David T. Stevenson, Caesar Rodney Institute

John Droz, Alliance for Wise Energy Decisions

Hon. Tim Huelskamp, Ph.D., The Heartland Institute

Energy Markets

WTI Crude Oil: ↓ $59.40

Natural Gas: ↓ $2.78

Gasoline: ↑ $2.61

Diesel: ↑ $3.02

Heating Oil: ↓ $196.70

Brent Crude Oil: ↓ $67.12

US Rig Count: ↓ 1052

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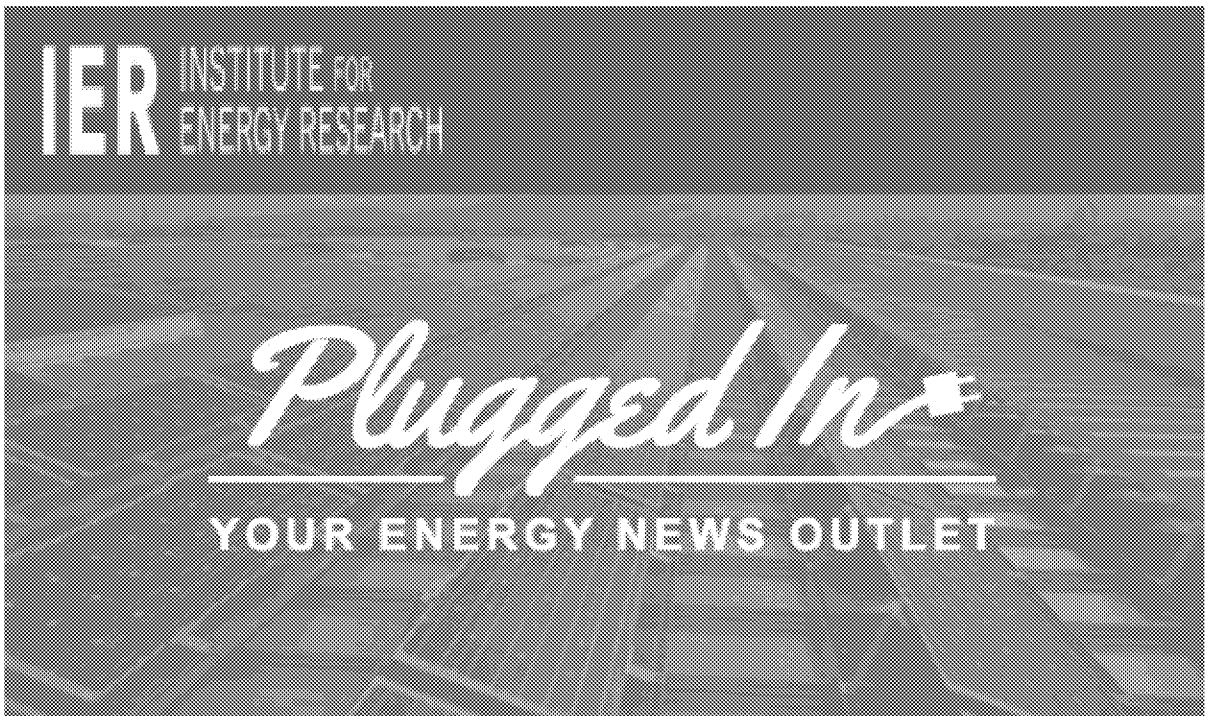
To: Woods, Clint [woods.clint@epa.gov]
Subject: The U.N. Renounces Science



SURGING

The most recent recipient of the Nobel Prize in Economics, William Nordhaus, has produced research explicitly showing the emissions goals set by the United Nations' Intergovernmental Panel on Climate Change would do little to mitigate climate change while wrecking havoc on the global economy. IER's Bob Murphy explains:

"Specifically, William Nordhaus just won the Nobel for his work on basically

inventing the economics of climate change. But while Nordhaus' model shows that even a ceiling of 2° Celsius is too aggressive—with the costs outweighing the benefits—the media breathlessly tells the world that the latest 'science' from the IPCC shows humanity that we have about a decade to implement draconian measures if we are going to achieve the goal of limiting warming to 1.5°Celsius."

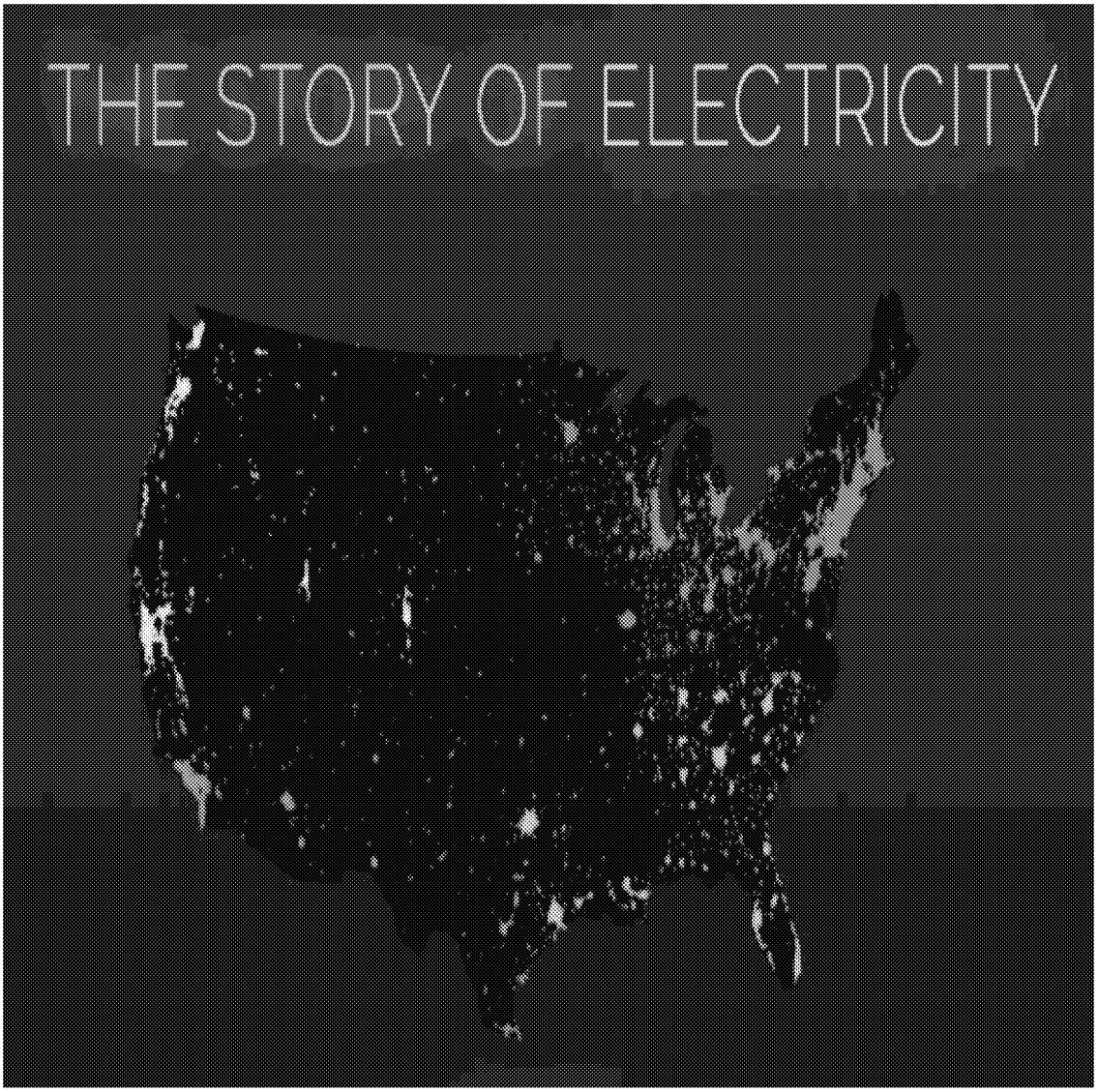
Read the full analysis of the United Nations' dangerous and unscientific agenda here.

HISTORY OF ELECTRICITY

The Discovery That Changed Everything

Most of us don't give a second thought to where our electricity comes from. The truth is that the power grid is the biggest engineering achievement of the 20th century and one of the most indispensable machines on Earth. Affordable, reliable electricity is fundamental to modern life. It provides light around the clock, it cools our homes on hot summer days (and heats them in winter), and it quietly breathes life into the digital world we tap into with our smart phones and computers.

When we take a fresh look at electricity, we see that keeping America powered up is actually an amazing feat—an everyday miracle. Here's the Story of Electricity.



Latest Analysis

- Saudi Arabia Halts $200 Billion Solar Project
- McGillis to Majkut on Majkut to Forbes

- Over a Quarter of the U.S. Nuclear Fleet Is at Risk for Retirement

THE WIRE

IER News Highlights

- IER President, Tom Pyle, quoted in *The New York Times* on changes to E.P.A. rule making
- IER research on global emissions highlighted by Stephen Moore in *The New York Post*

THE BUZZ

IER on Social Media

- Nearly 210k total people Reached
- Nearly 500 interactions on Tweets
- Over 2,300 interactions on Facebook posts

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THE BREAKER

"Too many lawmakers and federal officials would rather ignore the evidence than admit that the Renewable Fuel Standard was a disastrous mistake... The ethanol mandate is a clear example of a policy with no real benefits and serious, measurable costs." – Jeff Stier, Policy Advisor to The Heartland Institute

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Sent: 10/12/2018 1:25:04 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Green dreams are a living nightmare for grandma.

View this email in your browser

MORNING ENERGY NEWS | 10.12.2018

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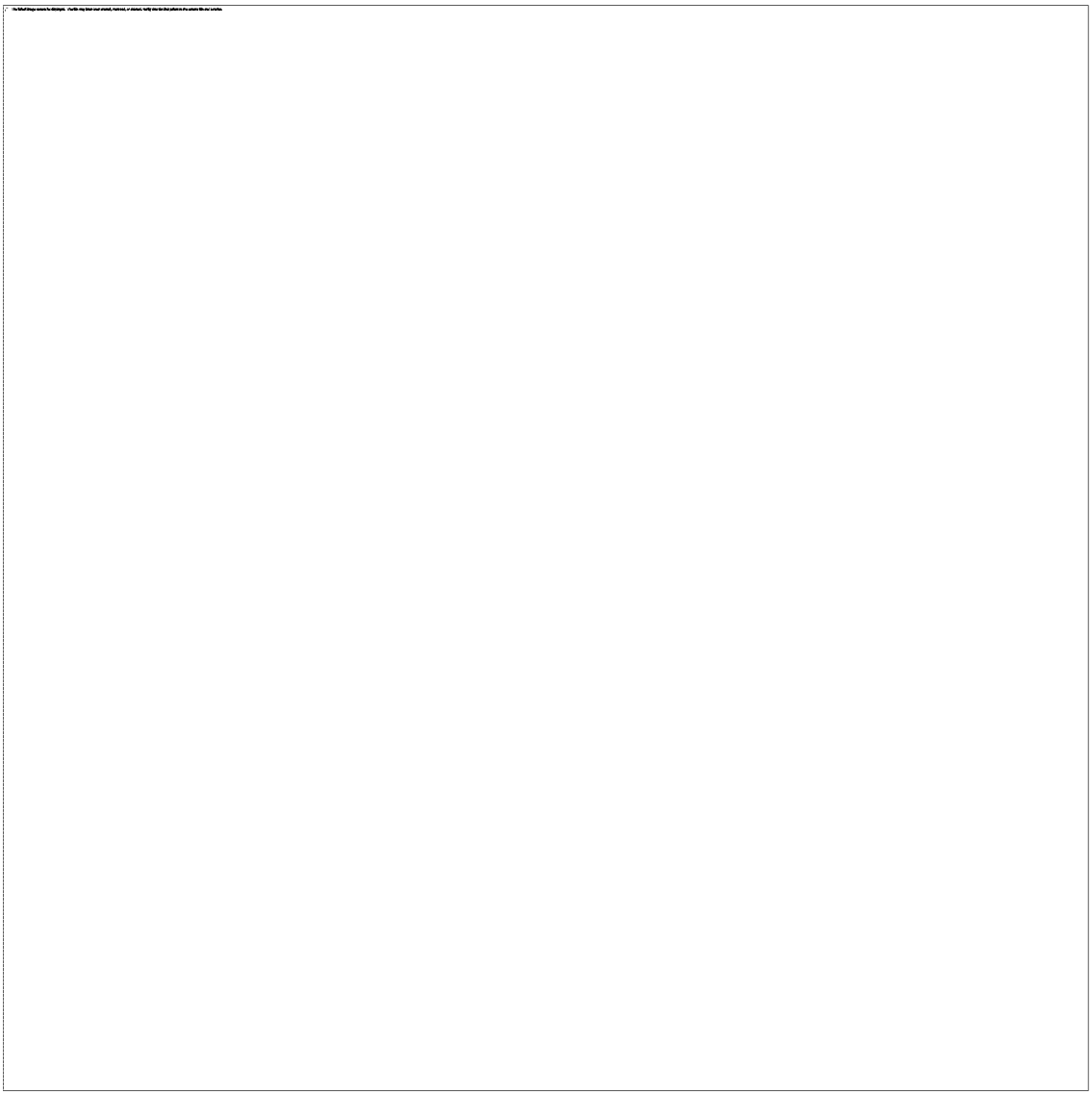
Welcome to the future, brought to you by the environmental left.

The Washington Post (10/11/18) reports: "The cost of staying warm this winter is going to grow for the average American, and it's going to be especially painful for those who rely on heating oil, a federal agency said. The U.S. Energy Information Administration forecasts a 20 percent increase in spending for heating oil but more modest increases of 3 percent for electricity and 5 percent for natural gas. Propane expenditures are expected to be roughly on par with last year, the agency said. It's tough news for residents of the Northeast, which accounts for more than 80 percent of the nation's residential heating oil consumption."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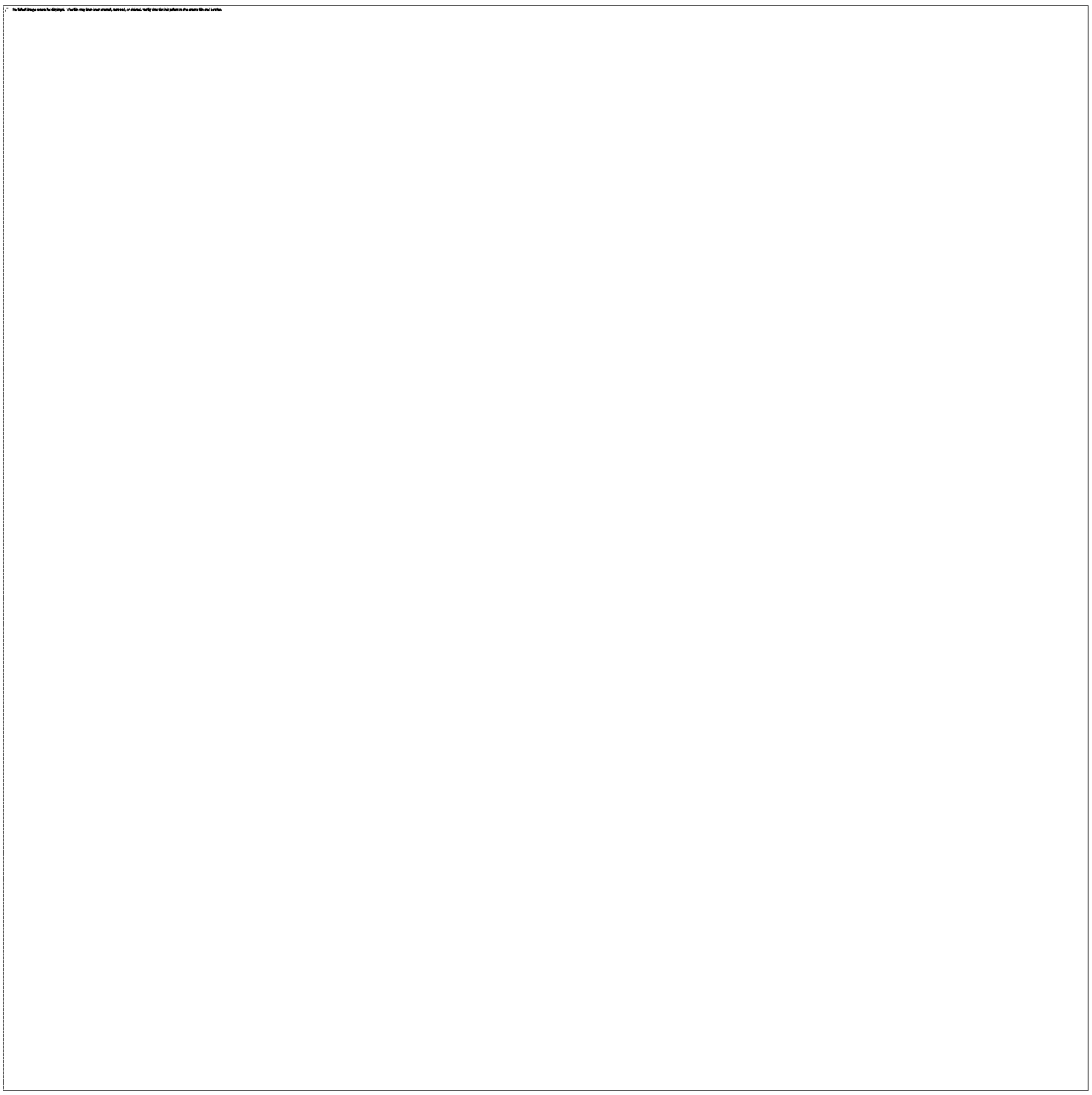
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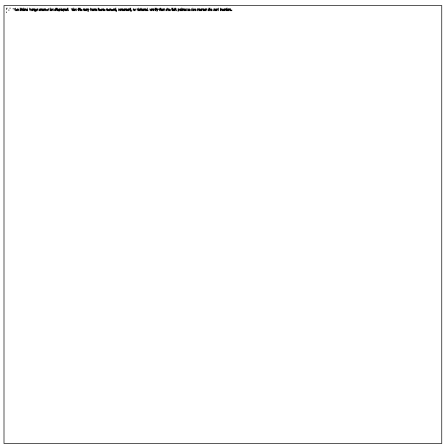


"While one hears lofty rhetoric about protecting small famers (though most payments go to agribusiness) and protecting the nation's food supply, most observers see farm subsidies as pure political gamesmanship. Congresspersons in farm states, which are often also Midwestern swing states, fight hard for subsidies to keep their electorates happy."

– Max Gulker, American Institute for Economic Research

The EU is destroying itself.

Reuters (10/10/18) reports: "German Chancellor Angela Merkel endorsed a hard-fought EU compromise deal for a 35 percent cut in car emissions by 2030,

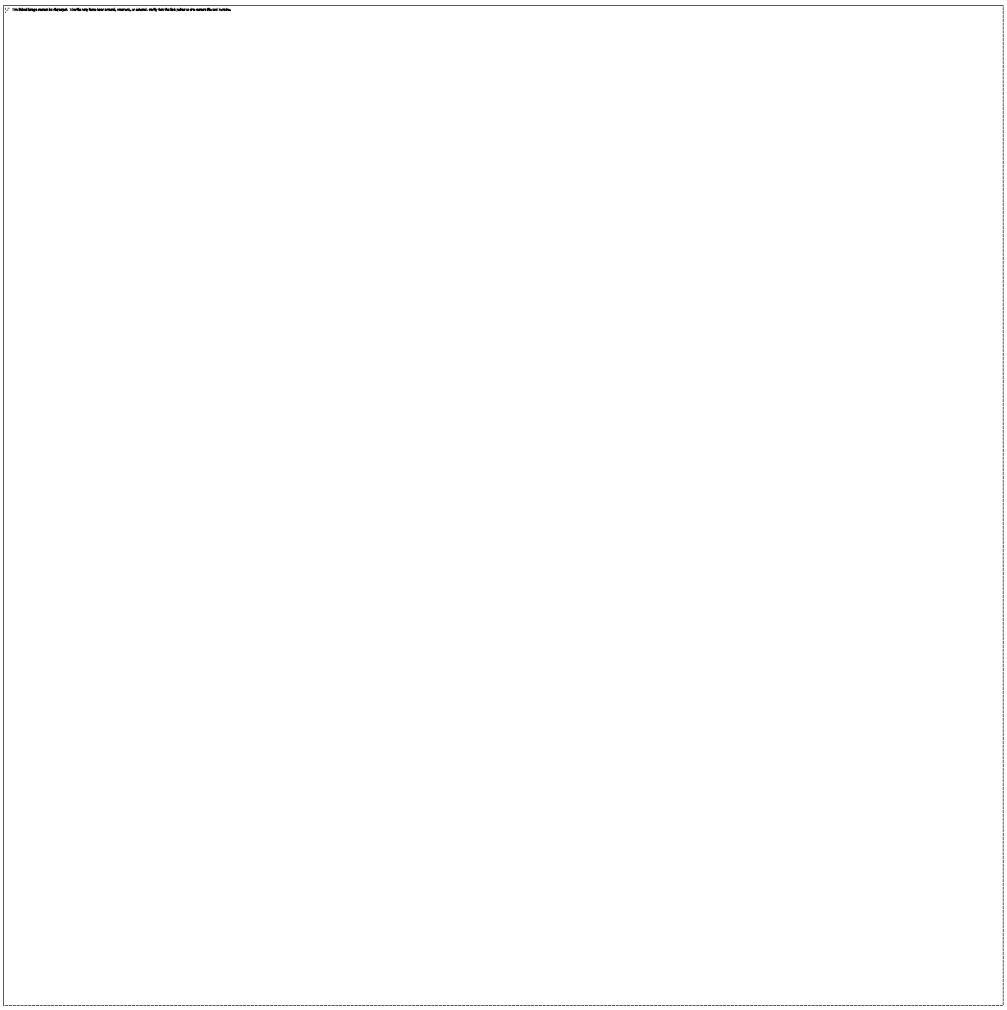
despite protests from her country's own automakers, which said the target was unrealistic and pursuing it would cost jobs. Torn between reducing pollution and preserving industry competitiveness, EU environment ministers in Luxembourg talked for more than 13 hours on Tuesday to reach a compromise over what 2030 carbon dioxide limits to impose on Europe's powerful car manufacturers."

The regulatory creep of climate change.

The Guardian (10/11/18) reports: "Hundreds of millions of pounds must be spent on the UK's draughty housing stock to meet the government's climate change targets, with progress so far too slow to make the difference needed. Repairing existing homes to a high standard, with insulation and renewable energy technology, would cut consumer bills and bring health improvements, a new report shows."

Even Nacho Libre agrees that the ethanol mandate is no bueno.

Foundation for Economic Education (10/11/18) article: "President Trump has said that he supports ramping up ethanol production even further by allowing gasoline containing 15 percent ethanol to be sold year-round. Doing so would expand ethanol use and encourage the EPA to ratchet that percentage up in subsequent years. Not surprisingly, the president made his announcement in Iowa, a major corn-belt state...When Congress approved the RFS, it was presumed that corn ethanol would be supplanted by cellulosic ethanol, made from non-food materials like switchgrass and wood chips. But refineries producing cellulosic ethanol never got off the ground, despite large government subsidies."



Vote no on Prop 112!

Denver Post (10/11/18) editorial: "The effect of that would be a ban on oil and gas exploration of Colorado's Denver-Julesburg Basin. That's the area in northeast Colorado where most of the state's drilling activity is occurring. With such a ban would come an exodus of oil and gas companies from the state, the high-paying jobs they create directly and indirectly, and the taxes they pay to state and local governments. Even if lawmakers were to walk the language of the statute back in 2019, it's a risk. And we're simply not willing to risk losing such a big part of Colorado's economy."

If you oppose a carbon tax, please contact us and take a stand.

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Phil Kerpen, American Commitment
William O'Keefe, George C. Marshall Institute
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Joe Bast, Heartland Institute
David Ridenour, National Center for Public Policy Research
Grover Norquist, Americans for Tax Reform

Sabrina Schaeffer, Independent Women's Forum
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Rich Collins, Positive Growth Alliance
Craig Richardson, E&E Legal
The Honorable George Allen, American Energy Freedom Center
Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $71.50
Natural Gas: ↓ $3.21
Gasoline: ↓ $2.91
Diesel: ↑ $3.30
Heating Oil: ↑ $233.31
Brent Crude Oil: ↑ $80.58
US Rig Count: ↑ 1150

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From: Rebecca Primis [primis@spn.org]
Sent: 10/11/2018 12:44:03 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: SPN Annual Meeting: What to know for Thursday

SPN 26th Annual Meeting: Highlights for Thursday, October 11

A big thank you to the Sutherland Institute for hosting us all at State Night last night! It was an incredible opportunity to meet Olympians, watch Fudd Feddersen and the Flying Aces perform, and take in the many things Utah has to offer. Getting to walk out on the football field was pretty incredible too!

Don't forget to post your pictures to the Activity Feed in the Annual Meeting app.

Want to find out more about the work Sutherland is doing? Check out our recent interview with them.

Lunch plenary: awards presentations

When: Thursday, October 11 | 12:30 p.m. – 2:00 p.m.
Where: Grand America: Grand Ballroom

Join us in recognizing the achievements of state think tanks and individuals doing exceptional work!

Bob Williams Awards for Outstanding Policy Achievements
These awards celebrate state think tanks' accomplishments in three policy categories: Best Issue Campaign, Most Influential Research, and Biggest Win. Check out the amazing work of the finalists in each of the three categories.

Overton Award

The Overton Award recognizes an outstanding COO or EVP — an individual who not only helps create their organization's vision, mission, and strategic direction, but who also oversees its day-to-day implementation.

Roe reception & dinner details

When: Thursday, October 11 | 6:00 p.m. – 9:00 p.m.
Where: Grand America: Connections Lounge/Grand Ballroom

The evening will start with the Roe Reception from 6:00 p.m.–7:00 p.m. in the Connections Lounge/Imperial Ballroom. From there we will head to dinner and the evening program, which includes the Thomas A. Roe Award presentation and a keynote featuring Patrick Byrne, CEO of Overstock.com and philanthropist, and PJ O'Rourke, leading political satirist and best-selling author.

The annual Thomas A. Roe Award Dinner is a special time to celebrate our network's growth and accomplishments. Named after SPN's founder, the Roe Award pays tribute to those in the state-based liberty movement whose achievements have greatly advanced free-market principles and solutions. This year's Roe Award will recognize an outstanding network leader for their leadership, innovation, and accomplishment in public policy.

Dress code: Both business and cocktail attire are acceptable.

Important: Annual Meeting social media policy

The SFN Annual Meeting is invitation-only, and as such, much of the content cannot be publicly shared outside of the conference.

All breakout and workshop sessions are off the record. Live tweeting, recording video, posting pictures, or sharing content from the sessions are expressly prohibited.

Policy Main Stage

Where: Grand America: Grand Salon

These fast-paced, 35-minute sessions on hot topics in the states are a great way to get up to date or begin exploring issues that may soon impact your state. The morning starts with Mark Janus and one of the lead attorneys on the *Janus* case discussing their Supreme Court victory at 9:30 a.m.

Other sessions taking place:

- 10:10 a.m. – 10:45 a.m. | The State of the Law: Important Court Cases to Watch
- 11:00 a.m. – 11:35 a.m. | The Power of Local
- 11:40 a.m. – 12:15 p.m. | The Untold Toll of Federal Lands and What is Next

---

Reminder: We want your feedback! You can submit your evaluations for invidual sessions by selecting the session in the Annual Meeting app and scrolling down to the survey section.

Thursday sessions & workshops

Whether you want to learn more about effective policy approaches, enhance your skill set, or explore new capabilities, we have something for all levels of experience and disciplines.

- Building a Coalition to Shine a Spotlight on Government | Sponsored by Charles Koch Institute
- 2:15 p.m. - 3:15 p.m. (Little America: Idaho)
- Growing Government by Criminalizing Poverty: How "Fines & Fees" is the Next Big Property Fight | Sponsored by Institute for Justice
  2:15 p.m. - 3:15 p.m. (Little America: Arizona)
- Pursuing Freedom in the 50 States: Examining Trends and Identifying Opportunities for Reform | Sponsored by CATO Institute
  3:30 p.m. - 4:30 p.m. (Little America: Arizona)
- How to Launch a Digital Campaign With Limited Budget and Resources | Sponsored by Competitive Enterprise Institute
  3:30 p.m. - 4:30 p.m. (Little America: Idaho)

These are just a few of the sessions taking place today. See the full line-up here.

Great Communicators Tournament finalist round

When: 2:15 p.m. – 3:15 p.m.
Where: Grand America: Connections Lounge/Imperial Ballroom

Come by the finalist round for the 2018 Great Communicators Tournament to see some of the network's up-and-coming communicators in action. The winner of this tournament round will advance to our national finals in New York City and compete for a $10,000 grand prize.

Book sale & signing with P.J. O'Rourke

When: 9:00 p.m. – 9:30 p.m.
Where: Grand America: Connections Lounge/Imperial Ballroom

Please join us after the Thomas Roe Award Dinner for a book sale and signing of P.J. O'Rourke's latest book, *None of My Business*.

Thursday networking opportunities

Some networking at Annual Meeting happens in the hallways, but we also have dedicated space and events where you can connect with fellow attendees. Here are a few to keep in mind today:

Connections Lounge
9:00 a.m. – 5:00 p.m. | Grand America: Imperial Ballroom

Thanks to sponsors Epipheo, Loving Liberty, and Facebook, each corner of the lounge will offer comfortable seating and plenty of power outlets. The lounge is available for meetings throughout the day.

K12 Hospitality Suite
9:00 a.m. – 5:00 p.m. | Grand America: Vienna

Interested in education reform? Visit K12 in their hospitality suite to discuss your education policy interests with others who share your passion.

Tax Foundation Hospitality Suite
9:00 a.m. – 5:00 p.m. | Grand America: Fontainbleau

This space is available for anyone wanting to connect with the Tax Foundation and fellow tax policy enthusiasts.

Afternoon Break
3:15 p.m. – 3:45 p.m. | Grand America: Connections Lounge/Imperial Ballroom & Little America: Meeting Area Foyer

Reception: Build Community and Engagement with America's Future Foundation (Sponsored by America's Future Foundation)
4:30 p.m. – 5:30 p.m. | Great America: Envoy
Meet state-based think tanks who will share how an AFF chapter in their city has helped them reach new audiences. You'll also meet chapter leaders from across the country, and learn how to open a chapter in your area.

Roe Dinner Reception
6:00 p.m. – 7:00 p.m. | Grand America: Connections Lounge/Imperial Ballroom

After-Dinner Reception
9:00 p.m. – 11:00 p.m. | Grand America: Connections Lounge/Imperial Ballroom

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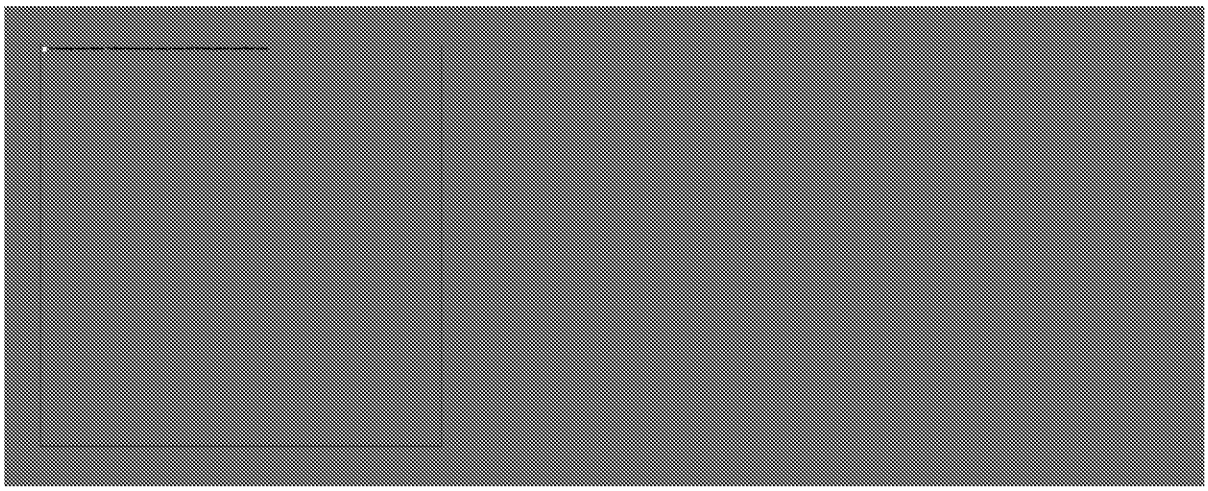
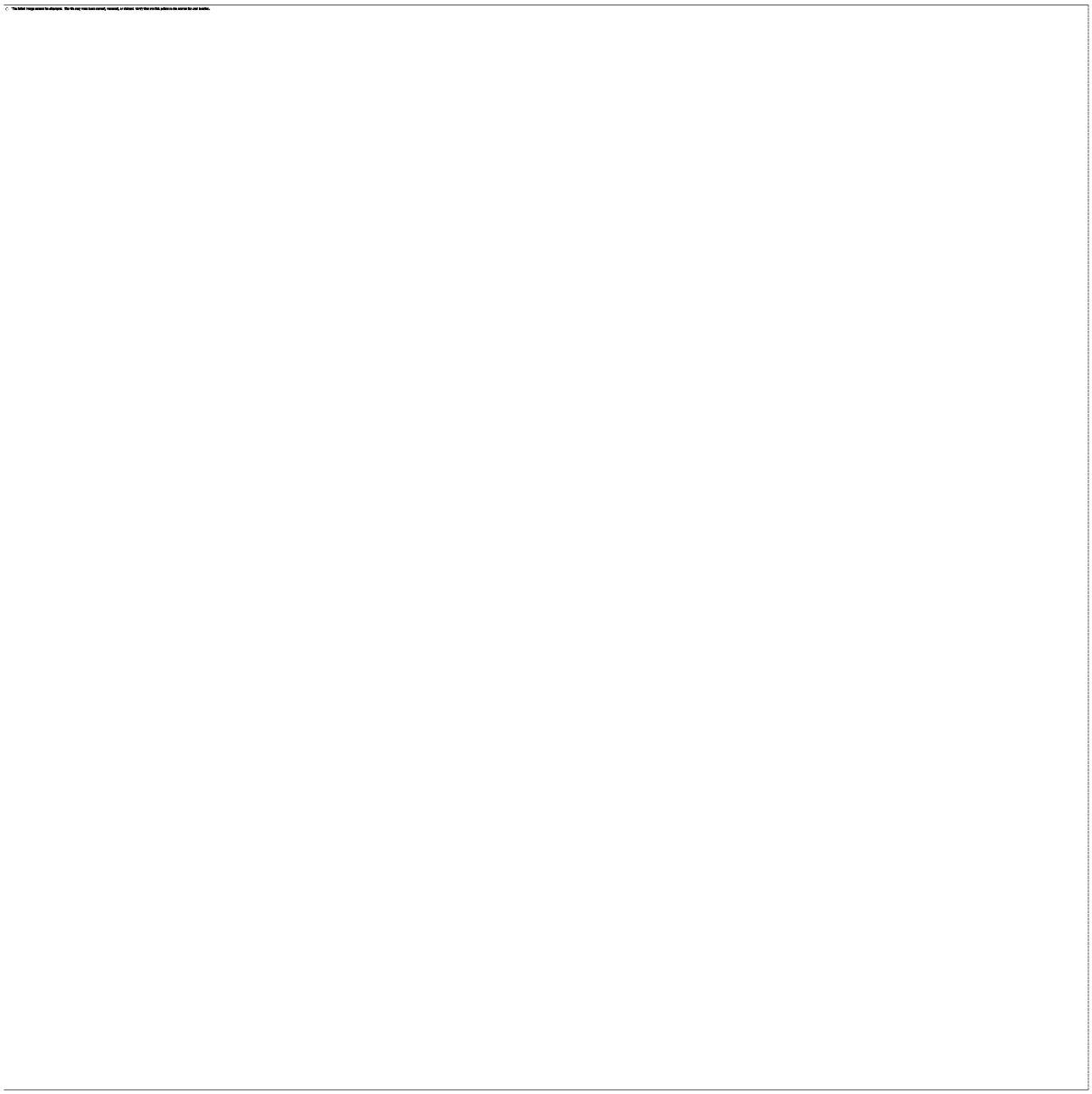
Subject: The Green Trojan Horse





SURGING

The latest wave of climate hysteria has many pundits referring to policies like the Green New Deal as "Trojan Horses" being used to bring about massive

socialist changes to the economy. IER's Robert Murphy explores the claims made by proponents of big government climate plans and comes to some startling conclusions about their intent.

"Stop calling the Green New Deal a Trojan Horse to bring about a Marxist revolution: The Marxists aren't in a horse at all! (For one thing, why involve more methane than needed to overturn capitalism?)"

Read the full article here.

From The Studios

What makes renewables so "clean" anyway?

When you hear the term "Clean Energy" what do you think it means? Almost everyone would agree the term means wind and solar power but that's a premise that is ripe for questioning. Check out the latest video from Clean Energy Alliance.

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Latest Analysis

- The United States Is a Major Energy Exporting Nation
- New Jersey Consumers Should Expect Electricity Rate Increases
- Review of Wind and Solar Tax Credits

THE WIRE

IER News Highlights

THE BUZZ

IER on Social Media

- IER's Robert Bradley quoted by the Heartland Institute on record oil production in Texas.
- IER's Dan Kish quoted in the *Daily Caller* on how Saudi Aramco's profitability may give Trump more leverage to push for pro-American energy policies.

- Over 257k total people Reached
- Over 700 interactions on Tweets
- Over 9,000 interactions on Facebook posts

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THE BREAKER

"The Green New Deal is a package of government handouts combined with a government-directed industrial policy straight out of the old Soviet

playbook."

— H. Sterling Burnett, senior fellow on environmental policy at the Heartland Institute

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From: Dunham, Sarah [Dunham.Sarah@epa.gov]
Sent: 5/3/2019 12:49:13 PM
To: Idsal, Anne [idsal.anne@epa.gov]; Woods, Clint [woods.clint@epa.gov]
CC: Gunning, Paul [Gunning.Paul@epa.gov]
Subject: FW: Second set of briefings
Attachments: BriefingAddendum.4.3.18.docx; SummaryClimateScienceBriefing.onepage.4.3.18.docx; climate indicators briefing_wehrum_april16.pptx; NCA.Overview_Wehrum_050218.pptx; ModelingBriefingWehrum6_5_18.pptx

5. April 3 Overview Review and Discussion
6. April 16 Observations and Indicators
7. May 2 Process and NCA
8. June 5 and 11 Modeling

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TAB8: Sectoral Impacts, 6/12/18

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TAB10: IPCC Special Report Summary on Global Warming of 1.5^{o}C, 11/28/18

TAB11: USGCRP & NCA, 7/10/18 & 11/28/18

TAB12: NCA Summaries for Policymakers

Climate science briefings presented to Assistant Administrator William Wehrum in 2018. Note that some presentations may be out of date (e.g., the NCA briefing was given before the final version of the NCA was released in November of 2018)

Message

From: Dolley Madison [fedsoc@fed-soc.ccsend.com]
on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 2/1/2019 7:49:20 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Starting Now: Understanding and Combating the Authoritarian Abuse of Interpol

The Federalist Society

February 1, 2019

Teleforum Starting NOW

Understanding and Combating the Authoritarian Abuse of Interpol

International & National Security Law Practice Group

Friday, February 1, 2019 | 3:00 p.m. ET

Dr. Theodore R. Bromund
Senior Research Fellow in Anglo-American Relations
Margaret Thatcher Center for Freedom,
The Heritage Foundation

Thomas Firestone
Partner
Baker & McKenzie LLP

Moderator:
Adam R. Pearlman
Former Associate Deputy General Counsel
United States Department of Defense

The International Criminal Police Organization - officially ICPO-INTERPOL, and commonly known simply as Interpol - plays an important role in international law enforcement, and its publications are often used in U.S. immigration and asylum cases. But neither Interpol nor its publications, including its famous Red Notice, are well understood. This can lead attorneys to fail to challenge Department of Homeland Security (DHS) assertions about Interpol that damage the interests of their clients, and cause judges to defer uncritically to Interpol publications in their decisions. Moreover, some argue that Interpol is increasingly being abused - being used for political purposes - by authoritarian regimes, and these abusive Red Notices have long-lasting effects outside the courtroom, as well as in it. The more the U.S. legal profession knows about Interpol, the more it will be able to prevent and combat this abusive politicization of law enforcement, and prevent it from affecting the U.S. legal system.

Speaker Biography

Dr. Theodore R. Bromund

Theodore "Ted" R. Bromund studies and writes on Anglo-American relations, U.S. and British relations with Europe and the European Union, America's leadership

role in the world, and international organizations and treaties as senior research fellow in The Heritage Foundation's Margaret Thatcher Center for Freedom.

Bromund, who joined Heritage in 2008, previously served nine years as associate director of International Security Studies at Yale University, a center dedicated to the study and teaching of diplomatic history and grand strategy. He was a lecturer in history beginning in 1999, and in international affairs for the master of arts program beginning in 2004.

A columnist for *Newsday*, *Forbes*, and Great Britain's *Yorkshire Post*, Bromund also writes regularly for *National Review*, *The Weekly Standard*, and *FoxNews.com*, and, in Britain, *CapX*. He has been interviewed or cited by BBC News, CBS News, Fox News Channel, CNN, Fox Business, Politifact, Radio Free Europe, *The Christian Science Monitor*, *Time*, and *Financial Times*, among others.

Besides contributing articles to scholarly journals, Bromund is the author of a chapter on former British Prime Minister Tony Blair and the fall of Iraqi dictator Saddam Hussein in the book *The Blair Legacy: Politics, Policy, Governance, and Foreign Affair*s (Palgrave Macmillan, 2009).

In 2013, Bromund was recognized by the Second Amendment Foundation as its Scholar of the Year for his analysis of the Arms Trade Treaty.

Bromund received his doctorate in history in 1999 from Yale. His thesis on Britain's first application to the European Economic Community won the Samuel H. Beer Dissertation Prize from the American Political Science Association's British Politics Group. In 2016, he received Heritage's Joseph Shattan Award in recognition of the quality of his writing.

He is an adjunct professor of strategic studies in the Strategic Studies Program at the Johns Hopkins University School of Advanced International Studies, where he teaches courses on grand strategy. He also holds two master's degrees in history from Yale as well as a bachelor of arts degree from Iowa's Grinnell College.

Thomas Firestone

Thomas Firestone represents clients in international white collar criminal investigations and compliance matters, including anti-corruption and US Foreign Corrupt Practices Act (FCPA), internal investigations and transactional due

diligence. He is a member of the Firm's Global Compliance & Investigations Steering Committee. Prior to joining the Firm, Thomas spent 14 years at the US Department of Justice. He worked as an Assistant US Attorney in the Eastern District of New York where he prosecuted transnational organized crime cases. He also worked as Resident Legal Adviser and Acting Chief of the Law Enforcement Section at the US Embassy in Moscow. In the latter capacity, he facilitated US-Russian law enforcement cooperation, assisted the Russian government in drafting new criminal legislation, advised the US government on policy issues related to criminal justice in Russia and twice won the US State Department Superior Honor Award.

Adam R. Pearlman

Adam R. Pearlman is a former Associate Deputy General Counsel of the United States Department of Defense. He previously held several positions in the U.S. Department of Justice, and during law school interned in the White House Counsel's Office. He is a Special Advisor to and member of the Executive Committee of the Federalist Society's International and National Security Law Practice Group, and is a former vice chairman of the ABA Section of International Law's committees on national security, and aerospace and defense. He is presently a liaison to the ABA's Rule of Law Initiative, and previously served as a liaison to the ABA's Standing Committee on Law and National Security.

Mr. Pearlman is the Editor-in-Chief of a forthcoming volume on the Foreign Intelligence Surveillance Court, and has been co-editor of the annually published *U.S. Intelligence Community Law Sourcebook* since 2011. His articles have appeared in such publications as the *Harvard National Security Journal*, *Stanford Law & Policy Review*, and *Intelligence & National Security*. He is a term member of the Council on Foreign Relations.

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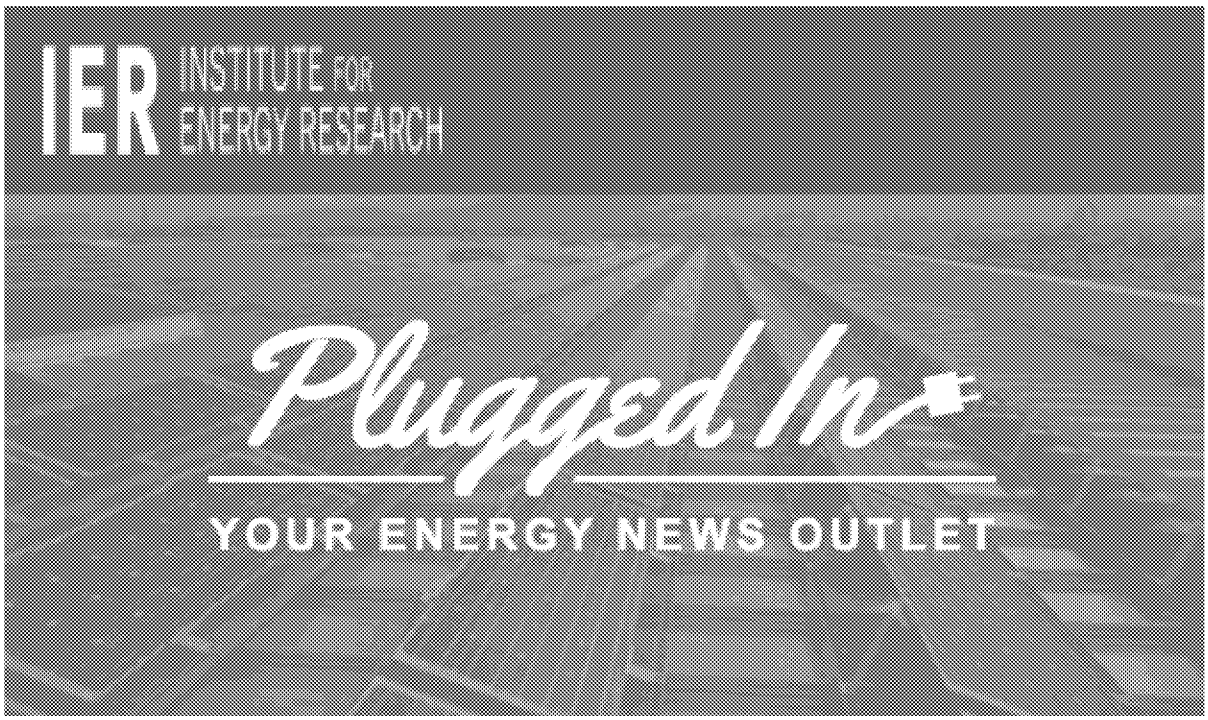
From: Institute for Energy Research [info@ierdc.org]
Sent: 3/21/2019 1:04:21 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Solyndra: Ten Years Later



SURGING

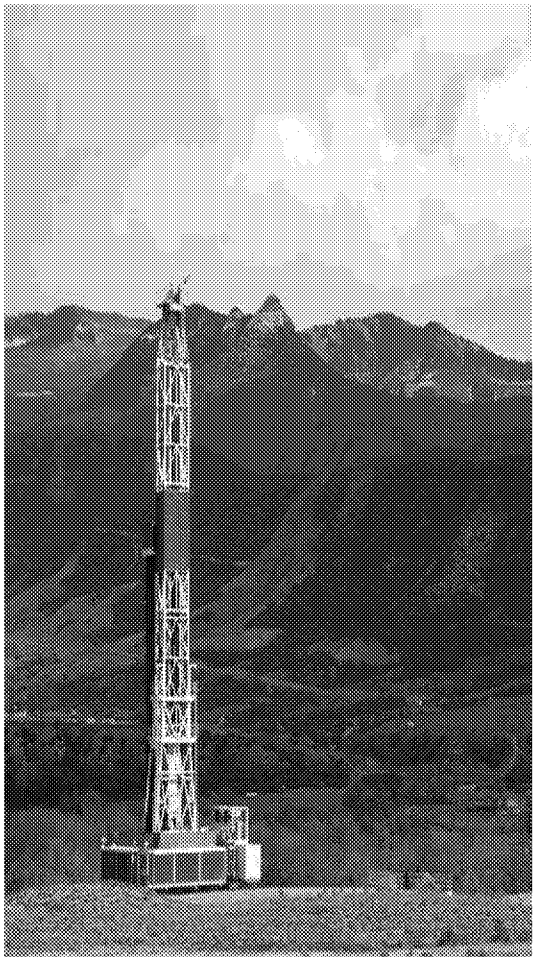
Yesterday marked the ten year anniversary of the federal government giving the Solyndra solar panel company over half a billion dollars. Less than two years later the company filed for bankruptcy leaving taxpayers to foot the bill. IER President Tom Pyle joined America's Newsroom to discuss the lessons learned from the Solyndra scandal.

"Take all the subsidization out. Let all these energy sources compete on their own and we'll all end up paying less for our energy. Why are the taxpayers on the hook for this high-risk stuff?"

Watch the full clip here.

From The Studios

Throwing Common Sense Out The Window



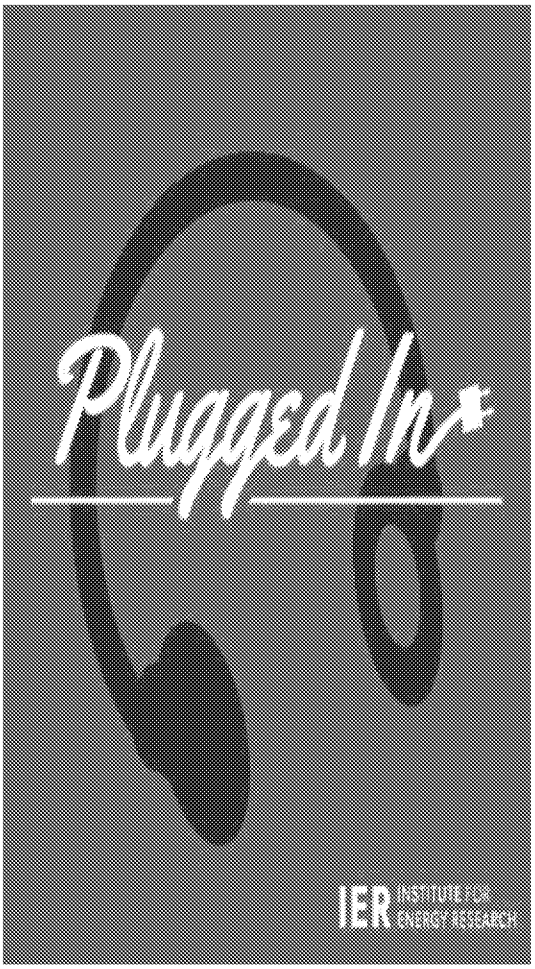
Chris Brown, director of policy & research at Common Sense Policy Roundtable, joined the show to discuss what the passage of SB-181 could mean for energy producers in Colorado and consumers around the country.

Listen now to Plugged In episode 21: *Chris Brown, of the CSPR, on the economic impacts of SB-181 in Colorado.*

Get *Plugged In*

Plugged In is now available on your favorite platforms including iTunes, TuneIn, SoundCloud, Stitcher, and YouTube.

Don't miss out on the latest commentary on energy issues. Subscribe today!



Latest Analysis

- Increased Electrification and Renewable Energy Require Massive Transmission Investment
- The Province of Alberta Shows Dangers of a Carbon Tax "Deal"
- U.S. Coal Exports Increased in 2018 as Countries Continue Their Consumption of Coal

THE WIRE

IER News Highlights

- IER research on renewable energy highlighted by the Heartland Institute
- IER's Jordan McGillis takes on the Green New Deal in his latest from the Foundation for Economic Education

THE BUZZ

IER on Social Media

- Over 290k total people Reached
- Over 800 interactions on Tweets
- Nearly 11,000 interactions on Facebook posts

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Subscribe to the Plugged In Podcast on iTunes

THE BREAKER

"Soviet Russia's 'five-year plans' were no joke. They wrecked Russia's economy. The Green New Deal, on a 10-year time frame, would do the same."

– Frank Miele, columnist for RealClearPolitics

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From: American Energy Alliance [info@americanenergyalliance.org]
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To: Woods, Clint [woods.clint@epa.gov]
Subject: [SPAM-Sender] Big Green's mischief doesn't end at the 49th parallel.

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In the Pipeline

MORNING ENERGY NEWS | 1.29.2019

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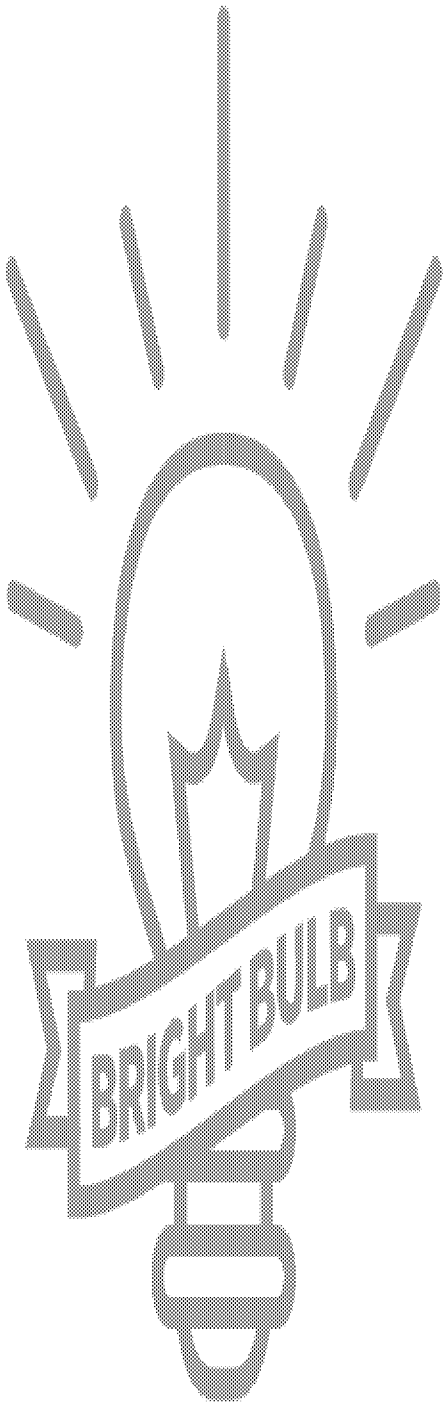
Aptly named.

Calgary Herald (1/17/19) profile: "Eight years ago, while researching who was behind an unscientific, misinformation campaign against farmed Canadian salmon, Krause 'came across these three little words: Tar Sands Campaign' in the tax forms of the Rockefeller Brothers Fund (which, ironically, made its billions from oil and gas). She saw that the foundation donated $1.4 million in 2007 to Corporate Ethics, 'to recruit the groups, develop the strategy, create a co-ordinated campaign and act as a re-granting agency for the North American Tar Sands Campaign,' states CorpEthics.org, the group's website. 'From the very beginning, the campaign strategy was to land-lock the tar sands so their crude could not reach the international market where it could fetch a high price per barrel,' boasts Michael Marx, the executive director of Corporate Ethics. The massive price discount in October 2018 of as much as US$52 per barrel for Alberta oil demonstrates that this campaign has been extremely effective."



"Rep. Alexandria Ocasio-Cortez declared last week that 'the world is gonna end in 12 years if we don't address climate change.'...(h)er full remarks made it clear she only meant that the world would begin to end in 12 years if we don't act. But she was still wildly wrong. Yet AOC was just saying what many people believe. Shallow, apocalyptic reporting on global warming has made us all panicky, more likely to embrace poor climate policies and less likely to think about the price tag."

– Bjorn Lomborg, Copenhagen Consensus Center

Get a room, MSM.

Clear Energy Alliance (1/25/19) video:

Depressing reminder: personnel is policy.

E&E News (1/28/19) reports: "West Virginia Sen. Joe Manchin has added two new staffers to work on energy issues as he takes over the lead Democratic position on the Senate Energy and Natural Resources Committee. The hires include Renae Black to serve as Democratic general counsel and Luke Bassett to serve as a professional staff member with energy policy responsibilities. The additions come on the heels of last week's announcements of Manchin's staff director, deputy staff director and press secretary Black has worked for the Senate Commerce, Science and Transportation Committee, where she served over the past five years as Democratic senior counsel under former ranking member Bill Nelson. Before her stint on Commerce, Black worked as counsel for Democrats on the ENR Committee under former ranking members Mary Landrieu and Maria Cantwell...Bassett's hire may offer a symbol of the seriousness that Manchin is taking his position's responsibility to address climate change. Bassett comes to the committee from a stint as the associate director for the left-leaning think tank Center of American Progress' domestic energy and environment policy program."

I thought the extra pounds I packed on over the holidays were because of my daily consumption of Christmas cookies. Turns out it's the climate.

L.A. Times (1/28/19) reports: "Maybe, when it comes to finding a way out of a global crisis of obesity, we're just thinking too small. Maybe the steps needed to reverse a pandemic of unhealthy weight gain are the same as those needed to solve two other crises of human health: malnutrition and climate change. So instead of trying to tackle each of these problems individually, public health experts recommend that we lash the three together."

Are you ready for President Harris?

Daily Caller (1/28/19) reports: "Democratic California Sen. Kamala Harris, who's running for president in 2020, claimed that global warming was behind devastating natural disasters Americans see every year, including wildfires and hurricanes. 'Let's speak truth — climate change is real and it is happening now,' Harris said at her first presidential rally in Oakland, California, Sunday. 'Everybody here knows from wildfires in the west to hurricanes in the east to

floods and droughts in the heartland, but we're not going to buy the lie, we're going to act based on science fact, not science fiction,' Harris said at the rally, which attracted thousands. However, Kamala Harris might be the one peddling 'science fiction' when it comes to climate science. While scientists actively debate the role global warming might play in natural disasters, there's little scientific support for the claims she made in her speech. A look through the U.S. government's fourth National Climate Assessment (NCA) shows little evidence for what Harris claims 'everybody knows' about global warming. In fact, there's little evidence and low confidence in tying global warming to many types of natural disasters."

KAMALA HARRIS FOR THE PEOPLE

PAID FOR BY KAMALA HARRIS FOR THE PEOPLE

Energy Markets

WTI Crude Oil: ↑ $52.32

Natural Gas: ↑ $2.92

Gasoline: $2.26

Diesel: $2.92

Heating Oil: ↑ $185.69

Brent Crude Oil: ↑ $60.31

US Rig Count: 1081

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Subject: Deliberative, Draft, Confidential
Attachments: SAB.docx

Let me know your thoughts. Thanks!

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From: American Energy Alliance [info@americanenergyalliance.org]
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Subject: American energy dominance

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In the Pipeline

MORNING ENERGY NEWS | 12.27.2018

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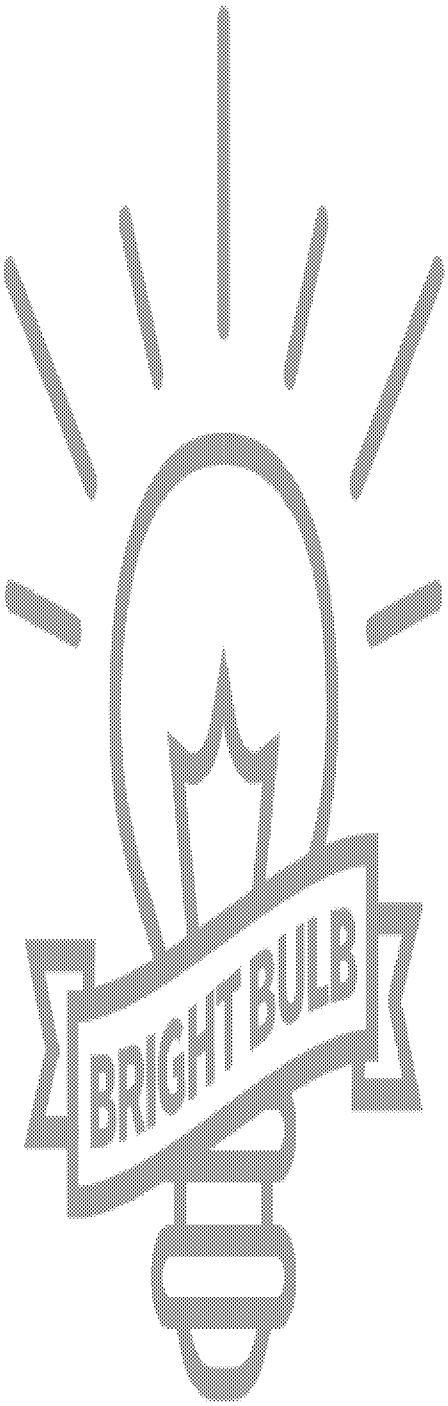
Thank you, Ryan Zinke.

The Hill (12/27/18) reports: "Zinke was instrumental in carrying out the Trump administration's 'energy dominance' agenda, with the year poised to see more land being opened up to licenses and potentially the first new offshore drilling in decades. His replacement is unlikely to alter course. Zinke, who is leaving the administration following a slew of ethics controversies, focused much of his 20 months in the Cabinet on expanding oil and gas drilling on public lands and shrinking the boundaries of two national monuments. Under Zinke's tenure, the Bureau of Land Management (BLM) made a sweeping change to the way it auctioned off government-owned lands and waters for leasing. Before, the agency focused on sales of small pinpointed clusters of likely oil-rich areas. Under Zinke, the focus shifted to offering thousands of acres for lease in one fell swoop, a change championed by the oil and gas industry. In March, Interior held the largest oil and gas leasing sale in U.S. history, auctioning 77.3 million

acres of offshore waters to drilling across Texas, Louisiana, Mississippi, Alabama and Florida."



"We, speaking as one, believe in the restoration of the Scientific Method and the dismissal of ideological dogma at the United Nations. That means a healthy skepticism of data interpretation and policy conclusions and an end to the war on science and scientists by powerful state-backed forces."

– James Taylor, Heartland Institute

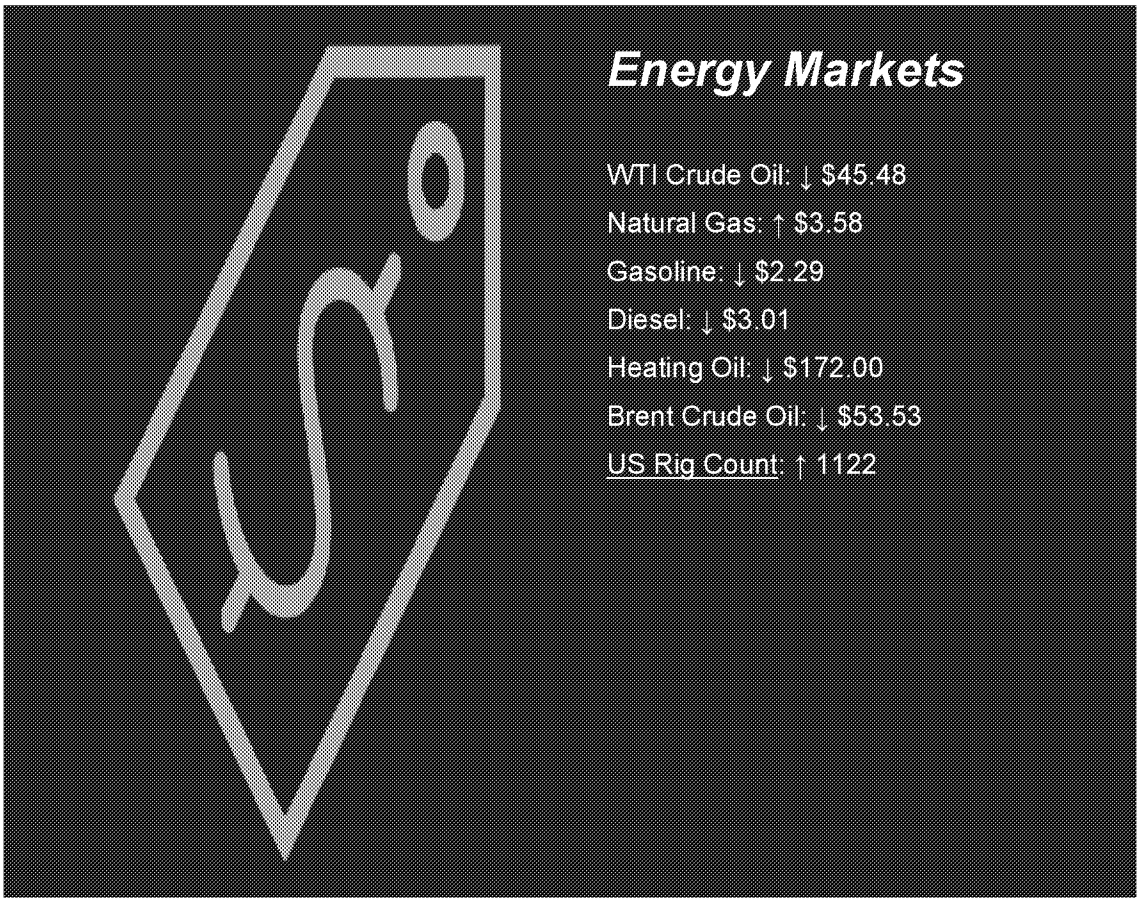
The U.S. is the champion of energy realism.

Real Clear Energy (12/26/18) op-ed: "The UN just completed the 'COP24 climate talks,' from December 3 to December 14 in Katowice, Poland. They could not come up with strict emissions cuts, because many are recognizing the balance between environmental concerns and economic growth. Just look at the rebellion in France over carbon tax hikes and the world can see that not many citizens of nations are willing to pay massive increases for energy to pay for an international vision that has proven unrealistic.There are reasonable nations who are willing to confront the fundamental financial and technological realities of today's energy landscape. By hosting a side panel at the climate talks focusing on how nuclear energy and technology to burn fossil fuels cleanly can contribute to achieving emissions goals, the U.S. has positioned itself firmly as the leader of the latter. This could have been an opportunity for rational discussion on clean coal technologies. The U.S.-led panel offered countries attending the COP24—particularly developing nations who are urgently trying to extend their electric grids to cover their entire populations—an opportunity to discuss and share information about cutting-edge technologies which could

allow them to continue to use all available energy resources while reducing emissions."

Permanent productivity in the Permian.

Forbes (12/27/18) reports: "In its most recent report, the USGS has included the Wolfcamp shale and Bone Spring Formation of the Delaware Basin portion of the Permian Basin for the first time, and the estimates are eye-popping. The new estimated mean of undiscovered, technically recoverable resources in the Permian basin are 46.3 billion barrels of oil, 281 Tcf of natural gas (17.5 times higher than the 2016 estimate!), and 19.9 billion barrels of NGLs. It is important to note that these estimates are of technically recoverable resources, as opposed to proved reserves. The difference is that the latter must be economically recoverable at prevailing prices. That may not be the case for a good portion of these resources, but that can change if oil and natural gas prices rise."



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To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum starting now: Update: Workers' Speech Rights in the Wake of Janus

The Federalist Society

October 26, 2018

Our Call is Beginning NOW

Update: Workers' Speech Rights in the Wake of *Janus*

Free Speech & Election Law Practice Group

Friday, October 26, 2018 | 12:00 noon ET

Mr. Robert Alt
President and CEO
The Buckeye Institute

In its *Janus v. AFSCME* decision this past June, the Supreme Court held that it violated the First Amendment for states to force their employees to subsidize the speech of labor unions. But are workers getting the relief that *Janus* promised? Rather than follow the ruling, some unions have reportedly claimed that members have to take action to opt-out of fee payments and may do so only during opt-out periods months or even years in the future. Others have refused to issue refunds of fees unlawfully collected from non-members. And, despite the opinion's strong language criticizing "exclusive representation" schemes under which a state or school board appoints a union to represent and speak for non-members, unions have continued to insist that they have the right to represent workers who disagree with union positions. These issues and more are currently being played out in state legislatures and litigation across the country.

Robert Alt, who is President and CEO of Ohio's Buckeye Institute, is at the center of it all, leading efforts to protect workers' rights. He will survey the key issues that have arisen in Janus's wake, describe the union strategies that keep workers from exercising their rights, discuss the major court cases, and share his thinking on how labor relations are poised to change in the near future.

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Speaker Biographies

Mr. Robert Alt

Robert Alt is the President and Chief Executive Officer of The Buckeye Institute, where he also serves on the Board of Trustees.

Mr. Alt's leadership has been the catalyst for The Buckeye Institute's exponential growth since he took the organization's helm in 2012. He has since founded The Buckeye Institute's esteemed Economic Research Center and Legal Center, from which the Buckeye team not only imagines public policy victories but compels them with sound data, objective research, and strategic litigation.

Mr. Alt is a nationally recognized scholar with expertise in legal policy including criminal justice, national security, and constitutional law. Prior to heading The Buckeye Institute, Mr. Alt was a Director in the Center for Legal and Judicial Studies serving under former U.S. Attorney General Edwin Meese III at The Heritage Foundation, where he regularly advised Members of Congress and Supreme Court litigants on complex legal arguments and strategy.

Mr. Alt is a frequent speaker at dozens of universities and law schools across the country, and his writings have appeared in *The Wall Street Journal*, *The Washington Times*, *New York Post*, *U.S. News & World Report*, *The San Diego Union-Tribune*, and SCOTUSblog. Mr. Alt is a longtime contributor to National Review Online, where he has published more than 100 articles and blogs. He has provided commentary on CNN, Fox News Channel, PBS and its affiliates, and numerous syndicated radio programs.

In 2004, Mr. Alt spent five months in Iraq as a war correspondent. Mr. Alt has testified before Congress multiple times-including at the confirmation hearings for Supreme Court Justice Elena Kagan-before the Federal Election Commission regarding matters of constitutional and administrative law, and before numerous state legislatures and committees.

Mr. Alt serves on the Board of Trustees for The Philadelphia Society, the Board of Governors for the Council for National Policy, the Boards of Directors for the Free Speech in Science Project and Center, the Federalist Society's Columbus Lawyers Chapter board, and the Board of Advisors for the Ashbrook Center at Ashland University where he has taught classes in constitutional law and political parties and interest groups. Mr. Alt also previously taught national security law, criminal law, and legislation at Case Western Reserve University School of Law.

Mr. Alt is an attorney admitted to the bars of Ohio and the U.S. Courts of Appeals for the Sixth and D.C. Circuits, a member of the Mont Pelerin Society, the U.S. Supreme Court Historical Society, and a former Fellow in the Center for

Constitutional Jurisprudence at the Claremont Institute where he was also a Publius Fellow in 1998.

Mr. Alt earned his J.D. from The University of Chicago Law School, where he was Symposium Editor and the winner of the Mulroy Prize for Excellence in Appellate Advocacy as well as Research Assistant to renowned law professor Richard Epstein. Following law school, he clerked for Judge Alice Batchelder on the U.S. Court of Appeals for the Sixth Circuit. Mr. Alt graduated with his B.A. in political science and philosophy magna cum laude from Azusa Pacific University where he won the Outstanding Senior Award in Political Science.

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Subject: We all know how this ends...

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E&E News (1/29/19) reports: "Political strategists have built an odd but durable alliance that is pioneering ways for U.S. companies to reduce carbon dioxide emissions. The uphill battle was born from the collapse of legislation in 2010 to cap carbon dioxide...But two advocacy groups, the Center for Climate and Energy Solutions (C2ES) and the Great Plains Institute (GPI), stumbled across a political formula for survival. It was a federal tax credit called 45Q that gave companies incentives to store CO2 underground...C2ES encountered GPI in 2010. The Minneapolis-based group works on technologies that help energy companies, labor unions, conservation organizations and energy state governors. The two groups found a common interest. 'We're not an environmental group,' Brad Crabtree, policy director, noted in an interview. But GPI saw possibilities to create domestic jobs and income. 'Our bread and butter is to help different coalitions work together on challenging issues. Once we find some consensus, then we help them advocate it to government bodies,' explained Crabtree."

"If Minnesota lawmakers are sincere in their belief that we must reduce carbon dioxide emissions as soon as possible, they must lift Minnesota's ban on new nuclear power plants, which has been in place since 1994."

– Isaac Orr, Center of the American Experiment

A "hidden surcharge"? Wake up, Californians.

Mercury News (1/29/19) reports: "Since at least 2015, Californians have been paying a 'hidden surcharge' on gasoline that adds an average of 20 cents to each gallon — costing drivers more than $17 billion — and now a coalition of lawmakers is asking the attorney general to find out why. A group of 19 legislators, including a dozen from the Bay Area, sent a letter Monday requesting that the state's Department of Justice investigate the mystery cost identified in a 2017 report on the state's high gasoline prices. The senate had held a hearing on the issue in the past, said Sen. Jim Beall, D-San Jose, one of those signing the letter. But at the time, the report's authors said they needed more resources to find out where the charge was coming from."

But pay no attention to our dependence on Russian gas.

Reuters (1/28/19) reports: "Germany's Economy Minister Peter Altmaier on Monday said that he did not want Germany to compensate for a planned phase out of coal-fired power by 2038 by importing nuclear power from neighboring countries. 'We want energy security to be provided at all times,' the minister told broadcaster ZDF, but added: 'We do not want to import cheap nuclear power from other countries.'"

Et tu, Kevin Williamson?

National Review (1/30/19) column: "The Baker-Schultz model appeals to some progressives because the dividend would be redistributive. (In theory.) My own view is that a more straightforward emissions tax (and why only on carbon dioxide to the exclusion of other greenhouse gasses?) would be more appropriate. (In theory.) If indeed we are assuming that the federal government is taking on a great deal of risk as the presumed lead actor in response to climate change, then it is going to need revenue.And it needs revenue, anyway. Yes, yes, I think the federal government should spend a lot less than it does and would be happy to take a meat ax to much of the federal budget. But we live in a different political reality, and even we libertarians have to nod in the general direction of reality from time to time. And here is one aspect of that reality: When the federal government is collecting 19 percent or 20 percent of GDP in taxes, we balance the budget or run a small surplus."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance

Myron Ebell, Competitive Enterprise Institute

Phil Kerpen, American Commitment

Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity

Grover Norquist, Americans for Tax Reform

George Landrith, Frontiers of Freedom

Thomas A. Schatz, Citizens Against Government Waste

Richard Manning, Americans for Limited Government

Adam Brandon, FreedomWorks

Craig Richardson, E&E Legal

Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute

Jason Hayes, Mackinac Center

David Williams, Taxpayers Protection Alliance

Paul Gessing, Rio Grande Foundation

Seton Motley, Less Government

Nathan Nascimento, Freedom Partners Chamber of Commerce

Isaac Orr, Center of the American Experiment

Hon. Tim Huelskamp, Ph.D., The Heartland Institute

Energy Markets

WTI Crude Oil: ↓ $53.73
Natural Gas: ↓ $2.80
Gasoline: ↑ $2.26
Diesel: $2.92
Heating Oil: ↓ $186.55
Brent Crude Oil: ↑ $60.90
US Rig Count: ↓ 1079

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To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Starting Now: Supreme Court Denies Review of CFPB Constitutionality

The Federalist Society

January 28, 2019

Teleforum Starting NOW

Supreme Court Denies Review of Constitutional Challenge to CFPB

Litigation Practice Group

Monday, January 28, 2019 | 3:00 p.m. ET

Sam Kazman
General Counsel
Competitive Enterprise Institute

On Jan. 14 the Supreme Court denied the cert petition in *State National Bank of Big Spring v. Mnuchin, No. 18-307*, which challenged the structure of the Consumer Financial Protection Bureau. At issue was the validity of two key CFPB features-a single director whom the President could remove only for cause, and funding that was independent of congressional appropriations. The bank had been joined in its challenge by the Competitive Enterprise Institute, which coordinated the lawsuit, and the 60 Plus Association. When the case was first filed in 2012, eleven states joined it in a broad challenge to Dodd Frank. After the plaintiffs were dismissed by the district court for lack of standing, the bank's case was reinstated in a D.C. Circuit decision written by then-circuit judge Kavanaugh-a fact which likely led to his recusal from consideration of the cert petition.

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President and CEO
The Buckeye Institute

In its *Janus v. AFSCME* decision this past June, the Supreme Court held that it violated the First Amendment for states to force their employees to subsidize the speech of labor unions. But are workers getting the relief that *Janus* promised? Rather than follow the ruling, some unions have reportedly claimed that members have to take action to opt-out of fee payments and may do so only during opt-out periods months or even years in the future. Others have refused to issue refunds of fees unlawfully collected from non-members. And, despite the opinion's strong language criticizing "exclusive representation" schemes under which a state or school board appoints a union to represent and speak for non-members, unions have continued to insist that they have the right to represent workers who disagree with union positions. These issues and more are currently being played out in state legislatures and litigation across the country.

Robert Alt, who is President and CEO of Ohio's Buckeye Institute, is at the center of it all, leading efforts to protect workers' rights. He will survey the key issues that have arisen in Janus's wake, describe the union strategies that keep workers from exercising their rights, discuss the major court cases, and share his thinking on how labor relations are poised to change in the near future.

Dial 888-752-3232 to Participate

Speaker Biographies

Mr. Robert Alt

Robert Alt is the President and Chief Executive Officer of The Buckeye Institute, where he also serves on the Board of Trustees.

Mr. Alt's leadership has been the catalyst for The Buckeye Institute's exponential growth since he took the organization's helm in 2012. He has since founded The Buckeye Institute's esteemed Economic Research Center and Legal Center, from which the Buckeye team not only imagines public policy victories but compels them with sound data, objective research, and strategic litigation.

Mr. Alt is a nationally recognized scholar with expertise in legal policy including criminal justice, national security, and constitutional law. Prior to heading The Buckeye Institute, Mr. Alt was a Director in the Center for Legal and Judicial Studies serving under former U.S. Attorney General Edwin Meese III at The Heritage Foundation, where he regularly advised Members of Congress and Supreme Court litigants on complex legal arguments and strategy.

Mr. Alt is a frequent speaker at dozens of universities and law schools across the country, and his writings have appeared in *The Wall Street Journal*, *The Washington Times*, *New York Post*, *U.S. News & World Report*, *The San Diego Union-Tribune*, and SCOTUSblog. Mr. Alt is a longtime contributor to National Review Online, where he has published more than 100 articles and blogs. He has provided commentary on CNN, Fox News Channel, PBS and its affiliates, and numerous syndicated radio programs.

In 2004, Mr. Alt spent five months in Iraq as a war correspondent. Mr. Alt has testified before Congress multiple times-including at the confirmation hearings for Supreme Court Justice Elena Kagan-before the Federal Election Commission regarding matters of constitutional and administrative law, and before numerous state legislatures and committees.

Mr. Alt serves on the Board of Trustees for The Philadelphia Society, the Board of Governors for the Council for National Policy, the Boards of Directors for the Free Speech in Science Project and Center, the Federalist Society's Columbus Lawyers Chapter board, and the Board of Advisors for the Ashbrook Center at Ashland University where he has taught classes in constitutional law and political parties and interest groups. Mr. Alt also previously taught national security law, criminal law, and legislation at Case Western Reserve University School of Law.

Mr. Alt is an attorney admitted to the bars of Ohio and the U.S. Courts of Appeals for the Sixth and D.C. Circuits, a member of the Mont Pelerin Society, the U.S. Supreme Court Historical Society, and a former Fellow in the Center for

Constitutional Jurisprudence at the Claremont Institute where he was also a Publius Fellow in 1998.

Mr. Alt earned his J.D. from The University of Chicago Law School, where he was Symposium Editor and the winner of the Mulroy Prize for Excellence in Appellate Advocacy as well as Research Assistant to renowned law professor Richard Epstein. Following law school, he clerked for Judge Alice Batchelder on the U.S. Court of Appeals for the Sixth Circuit. Mr. Alt graduated with his B.A. in political science and philosophy magna cum laude from Azusa Pacific University where he won the Outstanding Senior Award in Political Science.

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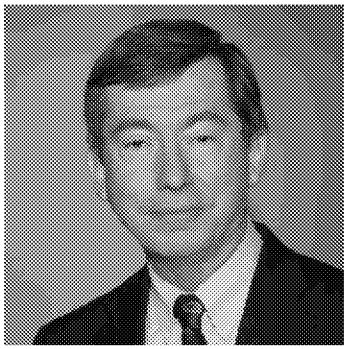
March 20, 2019

Teleforum Starting NOW

Is There a Constitutional Issue in the USMCA?

International & National Security Law Practice Group

Wednesday, March 20, 2019 | 3:00 p.m. ET



Prof. John S. Baker
Professor Emeritus
Paul M. Hebert Law Center
Louisiana State University

Dr. R. Sohan Dasgupta
University of California, Berkeley

Some argue that the United States Mexico Canada Agreement (USMCA) presents interesting questions about how to resolve trade and investment disputes. The USMCA, which is the new incarnation of the North American Free Trade Agreement (NAFTA), presents crucial constitutional issues concerning the Appointments Clause, the jurisdiction of the federal courts, due process and jury trial rights. For example, do the USMCA's binational dispute settlement panels bind the United States as a matter of domestic law? Is it permissible that the administrative agency-type panels' decisions are generally not reviewable by an Article III court? As important as the USMCA might be for trade and investment flow, few are arguing that the interests of American sovereignty be sacrificed. Our speakers will address these issues.

Speaker Biography

Dr. John S. Baker

Dr. John Baker is a Visiting Professor at Georgetown Law School and at Peking University School of Transnational Law. He has been a Visiting Fellow at Oriel College, the University of Oxford (2012-2014). He is Professor Emeritus of Law, and previously the Dale E. Bennett Professor of Law, at Louisiana State University Law School. He was an adjunct Fellow at the Heritage Foundation (Spring, 2008) and a Distinguished Scholar at the Catholic University of America Law School (2011-12). He has also taught at Tulane Law School, George Mason Law School, Pepperdine Law School, New York Law School, Hong Kong University, and the

University of Dallas, School of Management He has been a Visiting Professor at the University of Lyon III (France) (1999-2011) and at the Universidad de los Andes, Chile, where he was a Fulbright Specialist in 2012. He has lectured at universities and research institutes in Argentina, Austria, Brazil, China, Croatia, Peru, Slovenia, Taiwan, Vietnam, and the Philippines, where he was a Fulbright Fellow (2006).

Dr. Baker received his J.D., with honors, from the University of Michigan Law School and his B.A., magna cum laude, from the University of Dallas. He also earned a Ph.D. in Political Thought from the University of London.

Dr. Baker has taught over a dozen different subjects, mostly in the area of public law. His main areas of interest are Constitutional Law (particularly federalism and separation of powers), Criminal Law, Anti-Terrorism Law, International Law, Health Care Law, Mediation, and Comparative Law.

Dr. R. Sohan Dasgupta

Dr. R. Sohan Dasgupta is an international law expert who is also interested in constitutional law, commercial law, administrative law, and diplomacy. He speaks publicly on intellectual diversity and academic freedom. Dr. Dasgupta's contributions on U.S.-Asia, and particularly U.S.-India, partnership have appeared in Fortune, and his work on international law have appeared in various law reviews and think-tank briefs. Dr. Dasgupta led a think tank's efforts to produce a draft Constitution of Tunisia, an effort that a wide range of experts lauded. He presently is in private practice in Washington, D.C., specializing in international arbitration, litigation, and investigations.

Dr. Dasgupta earned his J.D. from the U.C. Berkeley School of Law (Boalt Hall), and was elected to the Order of the Coif. He earned his Ph.D. in international law from the University of Cambridge, where he was an Overseas Trust Scholar; his M.Sc. from the University of Oxford; and his B.A. from Columbia University. He is the author of *International Interplay: The Future of Expropriation Across International Dispute Settlement*, whose Foreword was written by a world-famous international arbitrator expert. Dr. Dasgupta clerked for Judge David A. Faber of the U.S. District Court for the Southern District of West Virginia and for Judge Consuelo M. Callahan of the U.S. Court of Appeals for the Ninth Circuit. He served as Executive Editor of the Harvard Journal of Law and Public Policy's

symposium issue and Executive Editor of the Berkeley Journal of International Law.

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In the Pipeline

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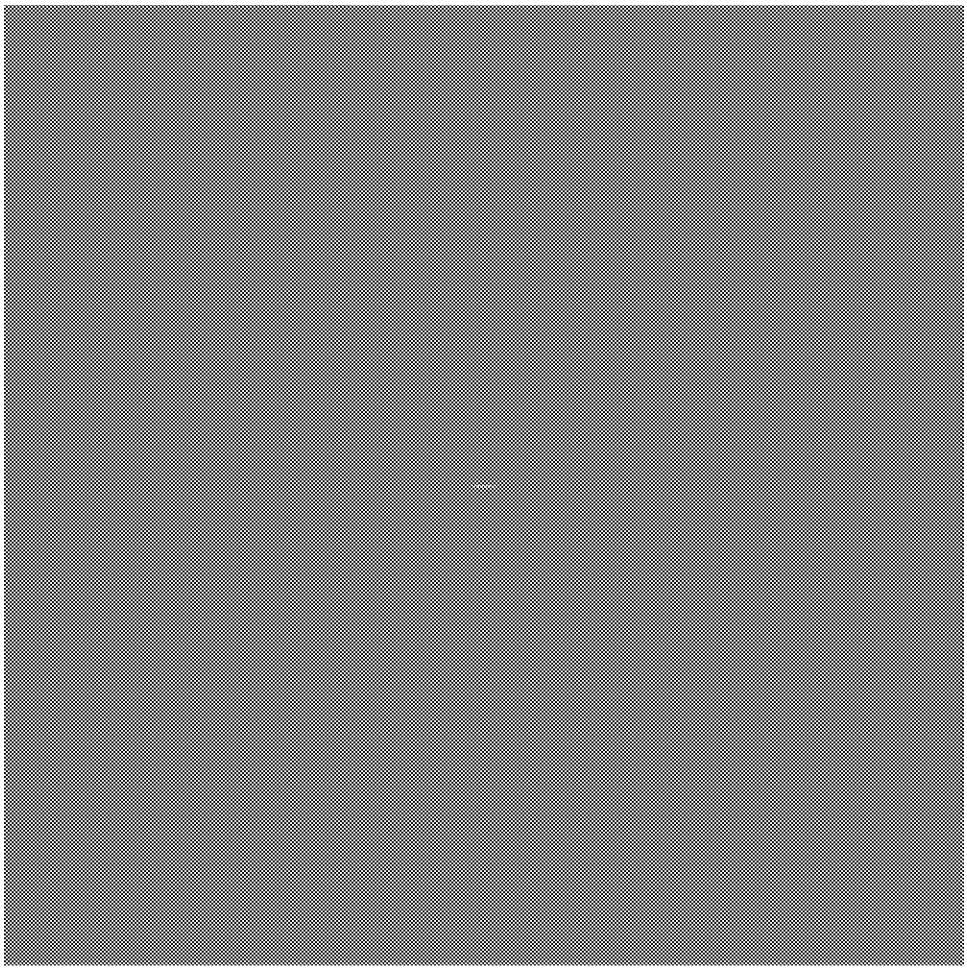
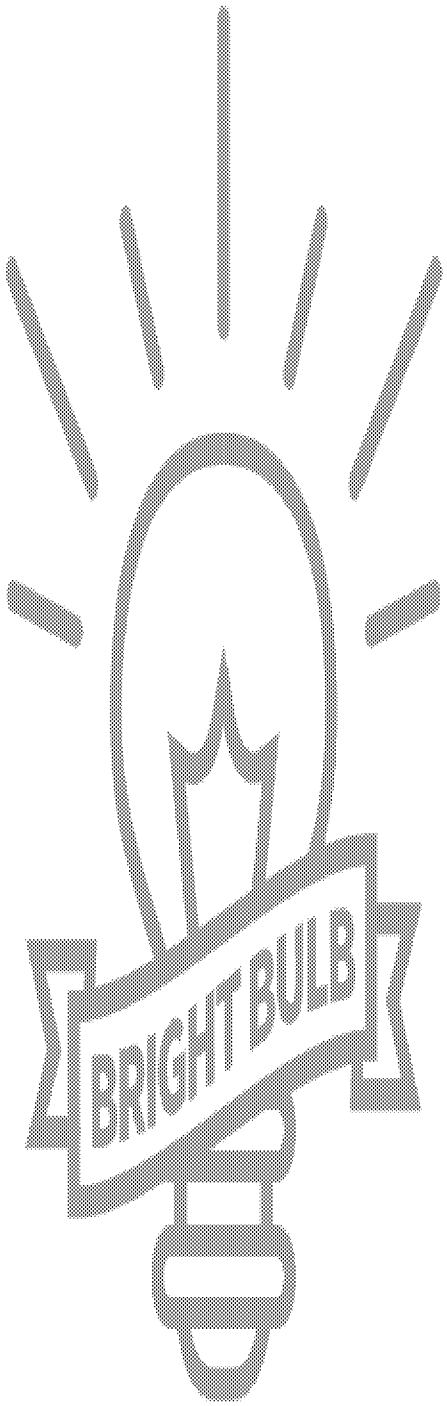
U.N. climate corruption.

New York Times (11/20/18) reports: "There were too many trips to Paris. And it wasn't helping to save the environment. That was among the conclusions of an internal audit that resulted in the resignation Tuesday of Erik Solheim, a veteran Norwegian diplomat, from his post as head of the United Nations Environment Program. The investigation, conducted by the United Nations Office of Internal Oversight Services, criticized the environment agency for 'a culture of scant regard for internal controls and existing rules' on the use of public funds."





"With From the Ashes, National Geographic deviated from the path of producing interesting and science-based documentaries, and instead joined the ranks of advocates, special-interest groups, and alarmists offering a distorted and inaccurate vision of the role of fossil fuels in human civilization...It ignored and hid all facts that run contrary to its narrative. It chose storytelling over truth-telling."

– Edward Hudgins, The Heartland Institute

Texas: OPEC's worst nightmare.

Bloomberg (11/21/18) reports: "The map lays out OPEC's nightmare in graphic form. An infestation of dots, thousands of them, represent oil wells in the Permian basin of West Texas and a slice of New Mexico. In less than a decade, U.S. companies have drilled 114,000. Many of them would turn a profit even with crude prices as low as $30 a barrel. OPEC's bad dream only deepens next year, when Permian producers expect to iron out distribution snags that will add three pipelines and as much as 2 million barrels of oil a day."

No Stupid Rules.

Townhall (11/23/18) op-ed: "On November 7, Acting Administrator of US Environmental Protection Agency (EPA), Andrew Wheeler announced a new effort to correct a long-standing and misguided requirement to maintain optimal air quality in America.This action will make it easier for facilities that produce air pollution to make beneficial changes without going through a convoluted and ineffectual permitting process. The problem started in 1977 when the senior author of this article served on an advisory panel to the EPA when amendments to The Clean Air Act were passed. The agency instituted a New Source Review (NSR) requirement intended to ensure the maintenance of air quality standards when innovative technology is installed at new plants or

existing plants undergo major modifications. In particular, before constructing a new stationary emission source or major modification of an existing source, the source operator must determine whether the project will increase emissions, and, if it does, get a new permit from that state government and or EPA that may require other control technology or measures."

Virginia now joins the ranks of ratepayer rip offs.

Heartland Institute (11/20/18) blog: "On Nov. 6, Virginia's State Corporation Commission approved a project to construct wind turbines near Virginia Beach. The plan calls for construction of turbines 27 miles off the coast, to begin operation by the end of 2020. Virginia electricity ratepayers will pay the exorbitant costs of this project. The project, named Coastal Virginia Offshore Wind, will be the first offshore wind project in the mid-Atlantic. Dominion Energy and Orsted A/S of Denmark will erect two six-megawatt wind turbines supplied by Siemens Gamesa of Spain."

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Tom Pyle, American Energy Alliance

Myron Ebell, Competitive Enterprise Institute

Phil Kerpen, American Commitment

William O'Keefe, George C. Marshall Institute

Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity

Joe Bast, Heartland Institute

David Ridenour, National Center for Public Policy Research

Grover Norquist, Americans for Tax Reform

Sabrina Schaeffer, Independent Women's Forum

George Landrith, Frontiers of Freedom

Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Rich Collins, Positive Growth Alliance
Craig Richardson, E&E Legal
The Honorable George Allen, American Energy Freedom Center
Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↓ $51.52
Natural Gas: ↓ $4.43
Gasoline:↓ $2.58
Diesel: ↓ $3.21
Heating Oil: ↓ $190.80
Brent Crude Oil: ↓ $60.25
US Rig Count: ↓ 1136

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Subject: Teleforum Starting Now: DOJ Filing Emergency Petition on Census Citizenship Question

The Federalist Society

January 25, 2019

Teleforum Starting NOW

DOJ Filing Emergency Petition on Census Citizenship Question

Civil Rights Practice Group

Friday, January 25, 2018 | 1:30 p.m. ET

Dr. John S. Baker
Visiting Professor
Georgetown University Law School

The inclusion of the citizenship question on the 2020 census remains both uncertain and controversial. On January 15, Judge Jesse M. Furman of the United States District Court in Manhattan issued an opinion blocking the Commerce Department from including a citizenship question. The opinion states that Secretary Ross violated the Administrative Procedure Act (APA) in various ways, including making an "arbitrary" and "capricious" decision to include the citizenship question. The opinion also posits that Secretary Ross violated the APA by failing to justify departures from past policies and practices, and failing to notify Congress of census subjects three years in advance. Judge Furman further believed that Secretary Ross' reasoning for including the citizenship question was "pretextual." However, he did not find that the plaintiffs carried their burden of proof showing that Ross' decision was pretext for impermissible discrimination.

Solicitor General Noel Francisco announced on January 24th that the Department of Justice will file a petition for writ of certiorari on January 25th with a proposal for expedited briefing to allow for oral argument and decision by the end of June, so the census questions can be printed on time. Francisco believes the issue is of such "imperative public importance" that it justifies altering the normal procedure of the Supreme Court to wait until the federal appeals court has had a chance to opine on the case.

John Baker joins us to discuss the Solicitor General's petition, and the likely future of the citizenship question.

Speaker Biography

Dr. John S. Baker

Dr. John Baker is a Visiting Professor at Georgetown Law School and at Peking University School of Transnational Law. He has been a Visiting Fellow at Oriel College, the University of Oxford (2012-2014). He is Professor Emeritus of Law, and previously the Dale E. Bennett Professor of Law, at Louisiana State University Law School. He was an adjunct Fellow at the Heritage Foundation (Spring, 2008) and a Distinguished Scholar at the Catholic University of America Law School (2011-12). He has also taught at Tulane Law School, George Mason Law School, Pepperdine Law School, New York Law School, Hong Kong University, and the University of Dallas, School of Management He has been a Visiting Professor at the University of Lyon III (France) (1999-2011) and at the Universidad de los Andes, Chile, where he was a Fulbright Specialist in 2012. He has lectured at universities and research institutes in Argentina, Austria, Brazil, China, Croatia, Peru, Slovenia, Taiwan, Vietnam, and the Philippines, where he was a Fulbright Fellow (2006).

Dr. Baker received his J.D., with honors, from the University of Michigan Law School and his B.A., magna cum laude, from the University of Dallas. He also earned a Ph.D. in Political Thought from the University of London.

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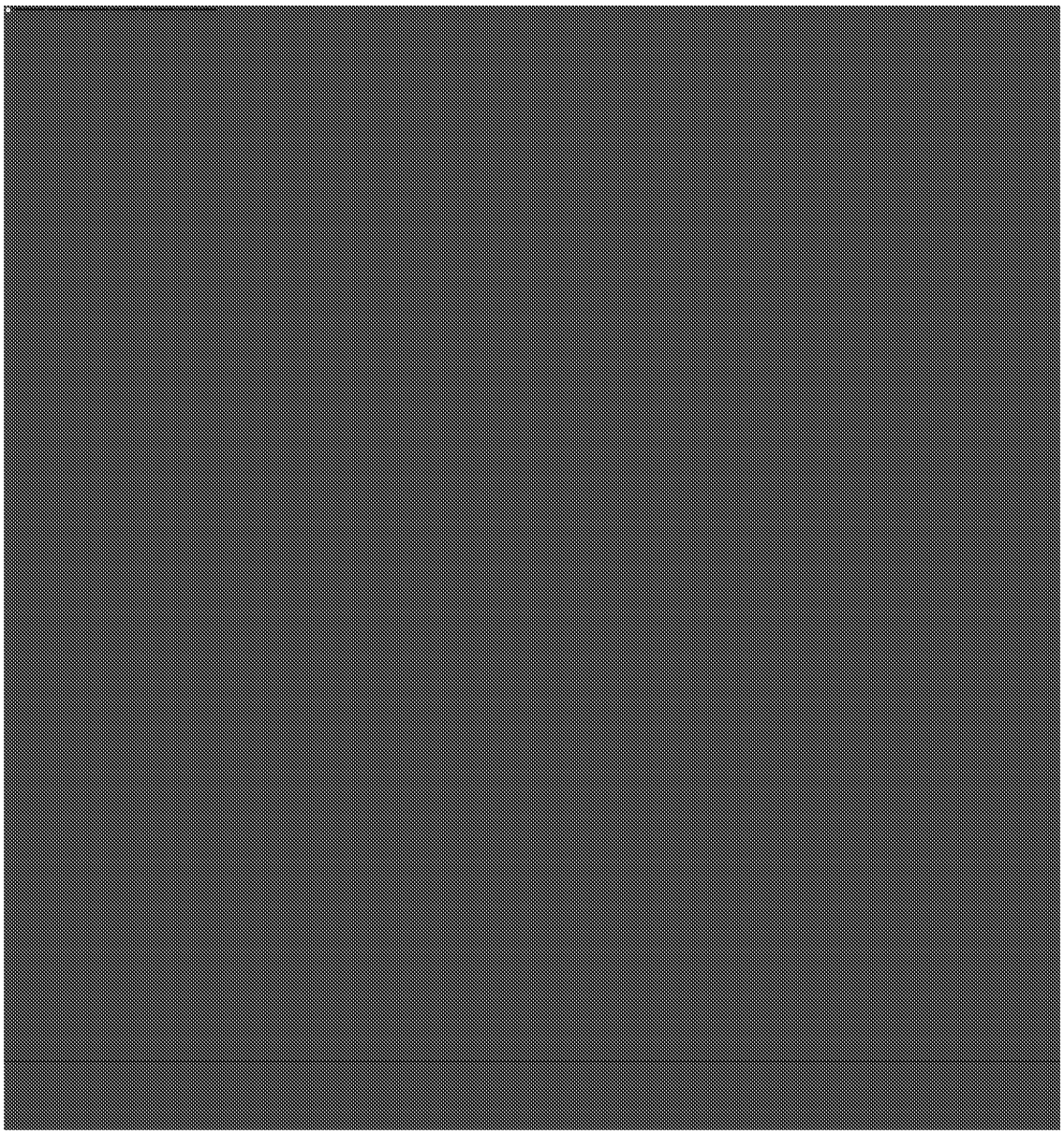
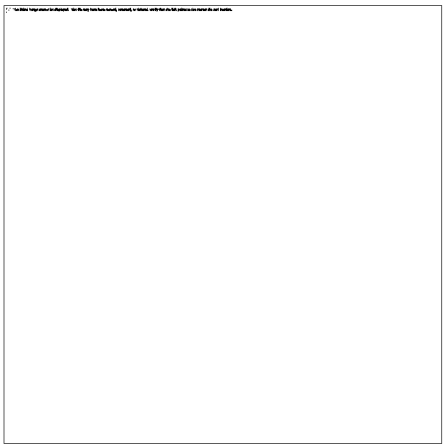
This is what the Keep-It-In-The-Grounders would have wanted.

Clear Energy Alliance (10/12/18) video:



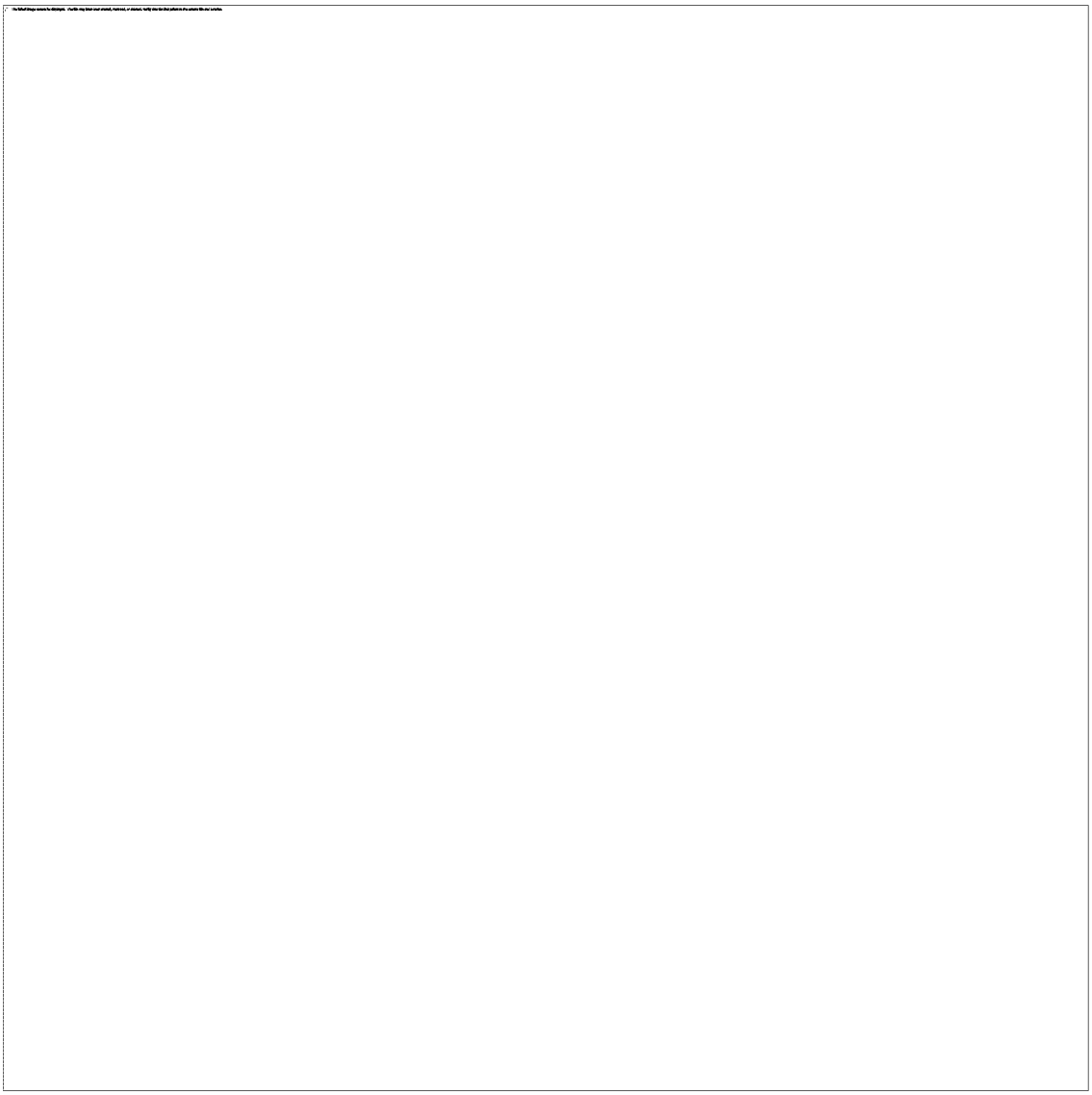


"We wouldn't want heavy industrial activities in our backyards and we think Colorado oil and gas operators need to do a better job of putting a buffer between their wells and residential areas. However, that is not what Proposition 112 is about. The proposition, put on the ballot by more than 120,000 concerned Coloradans who signed petitions, is written in such a way as to effectively ban oil and gas operations in a state with rich reserves waiting to be developed."

– Denver Post Editorial Board

And you thought long lines to "fill up the tank" were a thing of the past...

The American Spectator (10/18/18) column: "Electric cars can't go as far as gas-engined cars, even very thirsty ones. A 911 Turbo averages about 20 MPG (19 city, 24 highway) but it can still go between 340 and 429 miles (city/highway) on a full tank — which is at least 100-150 miles farther than the longest-legged electric car currently on the market, a Tesla S. And the range touted by Tesla and other EV advocates should always be taken with two big spoonfuls of salt — because it's much more variable than the range of a gas-engined car. For example, electric cars are more affected by heat — and cold — in part because power-using accessories such as AC and heat are powered by electricity and take a lot of electricity *to* power. Use these accessories and your range decreases...But even if an electric car's *range* exactly matched its gas-engined equivalent, there is still the problem of *recharging* these things. It is a *time* problem. And 'fast' chargers aren't going to solve it — because they're not."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Can I introduce you to the concept of regulatory capture?

Wall Street Journal (10/9/18) reports: "Exxon Mobil Corp., once a powerful skeptic of global warming, will now be among the first oil companies to put money into the fight to make climate change a political priority in Washington. The U.S.'s largest energy producer will commit $1 million over two years to promote a national tax on carbon as a way to address the environmental issue. The funding will back an initiative designed to appeal to the Republicans who now control Washington, and may open the door for Exxon's peers in the oil industry to follow."

What, is she supposed to ride in a separate carriage like Sophie Chotek?

Washington Post (10/18/18) reports: "Interior Secretary Ryan Zinke's approach to his wife's travel and activities sparked concerns among the department's ethics officials, according to a report issued Thursday by Interior's inspector general office.The report determined that staff in the department's solicitor

office 'approved Lolita Zinke and other individuals to ride in Government vehicles with Secretary Zinke' although Interior policy prohibited this practice."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance
Myron Ebell, Competitive Enterprise Institute
Phil Kerpen, American Commitment
William O'Keefe, George C. Marshall Institute
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Joe Bast, Heartland Institute
David Ridenour, National Center for Public Policy Research
Grover Norquist, Americans for Tax Reform
Sabrina Schaeffer, Independent Women's Forum
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Rich Collins, Positive Growth Alliance
Craig Richardson, E&E Legal

The Honorable George Allen, American Energy Freedom Center
Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $69.06
Natural Gas: ↓ $3.17
Gasoline: $2.87
Diesel: $3.30
Heating Oil: ↑ $230.98
Brent Crude Oil: ↑ $79.97
US Rig Count: ↓ 1151

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In the Pipeline

MORNING ENERGY NEWS | 10.26.2018

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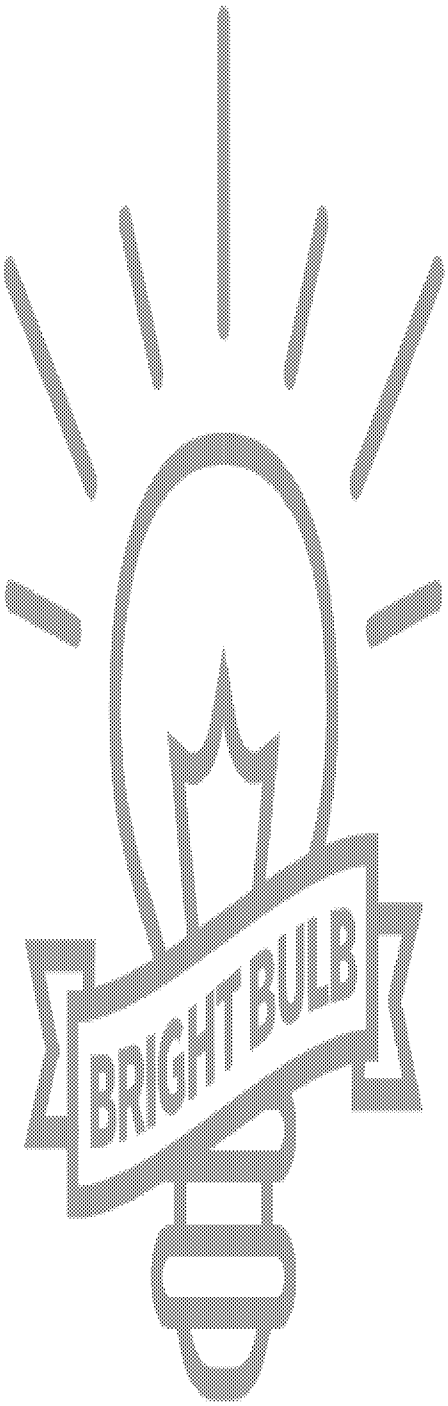
The tears of my enemies.

Bloomberg (10/24/18) reports: "California plans to attack the Trump administration proposal to freeze auto fuel economy standards at 2020 levels and unwind the state's plan for more stringent rules on tailpipe greenhouse gas emissions as 'unlawful,' California's attorney general said Wednesday. 'They are grossly derelict in not trying to move the dial forward in cleaning the air and the environment,' Xavier Becerra said in a conference call with reporters. 'The situation continues to get worse and requires action now, and not for us to stand pat,' he said. Becerra's comments were a preview of a formal response that California and 18 other states will file with the Environmental Protection Agency and the National Highway Traffic Safety Administration on Friday. That's the deadline for public comments on the Trump plan."



"Mr. Sunstein laments that 'political predilections appear to be running the show' in the Trump administration when it comes to things like the 'social cost of carbon' (SCC). He couldn't get that one more backward. Political predilections were dominant when the Obama administration inserted the SCC into its regulatory agenda. Note, for instance, that successive estimates for the SCC were initially introduced via trivial regulations that allowed them to avoid the scrutiny they were unlikely to survive."

– David Kreutzer, Energy Economist

May God bless Kevin McIntyre and his family.

Greentech Media (10/25/18) reports: "President Trump has named Neil Chatterjee as chairman of the Federal Energy Regulatory Commission, a move that will shift leadership of the agency but will not change its political balance. Wednesday's move by the White House comes after months of speculation over the ailing health of former FERC Chairman Kevin McIntyre, who has missed the commission's past two monthly meetings. In a Monday resignation letter, McIntyre stated that, despite his successful recovery from a brain tumor surgery last year, he has 'very recently experienced a more serious health setback, leaving me currently unable to perform the duties of Chairman.'"

Stockholm called. They want their hostages back.

Bloomberg Government (10/26/18) reports: "General Motors says it will ask the federal government for one national gas mileage standard, including a requirement that a percentage of auto companies' sales be zero-emissions vehicles. Mark Reuss, GM's executive vice president of product development, said the company will propose that a certain percentage of nationwide sales be made up of vehicles that run on electricity or hydrogen fuel cells. 'A national zero emissions program will drive the scale and infrastructure investments needed to allow the U.S. to lead the way to a zero emissions future,' Reuss said."

Godwin's Law prevails.

Los Angeles Times (10/25/18) opinion: "Nordhaus was recognized for his work developing a model to guide policymakers on how best to address the costs and benefits of limiting greenhouse gases. That's a noble goal, but Nordhaus' work has no more helped to defuse the threat of global warming than Neville Chamberlain's appeasement of Germany prevented World War II."

Beyond Godwin's Law: Climate change is literally Hitler.

NYMag (10/24/18) column: "(C)limate change is an all-encompassing threat and we are, as the IPCC says, at the all-hands-on-deck, every-little-bit-helps stage of the crisis. But carbon pricing is no cure-all, and market forces, even when channeled toward the right goals on climate, are no surer bet to solve the problem of global warming than they were to solve problems like slavery, gender and racial injustice, or genocide. Which all makes me suspicious of any kind of grand bargain that nets only a modest tax on emissions. That suspicion is twofold. First, as a way to impose at least some of the cost of carbon emissions on those who produce them, taxes are, absolutely, necessary. But even at very high rates, they seem to me insufficient to solve a problem this big. How big? The IPCC, not a hyperbolic body, offered a very clear analogy: a global mobilization like that which transformed the economies and cultures of the Allied nations during World War II."

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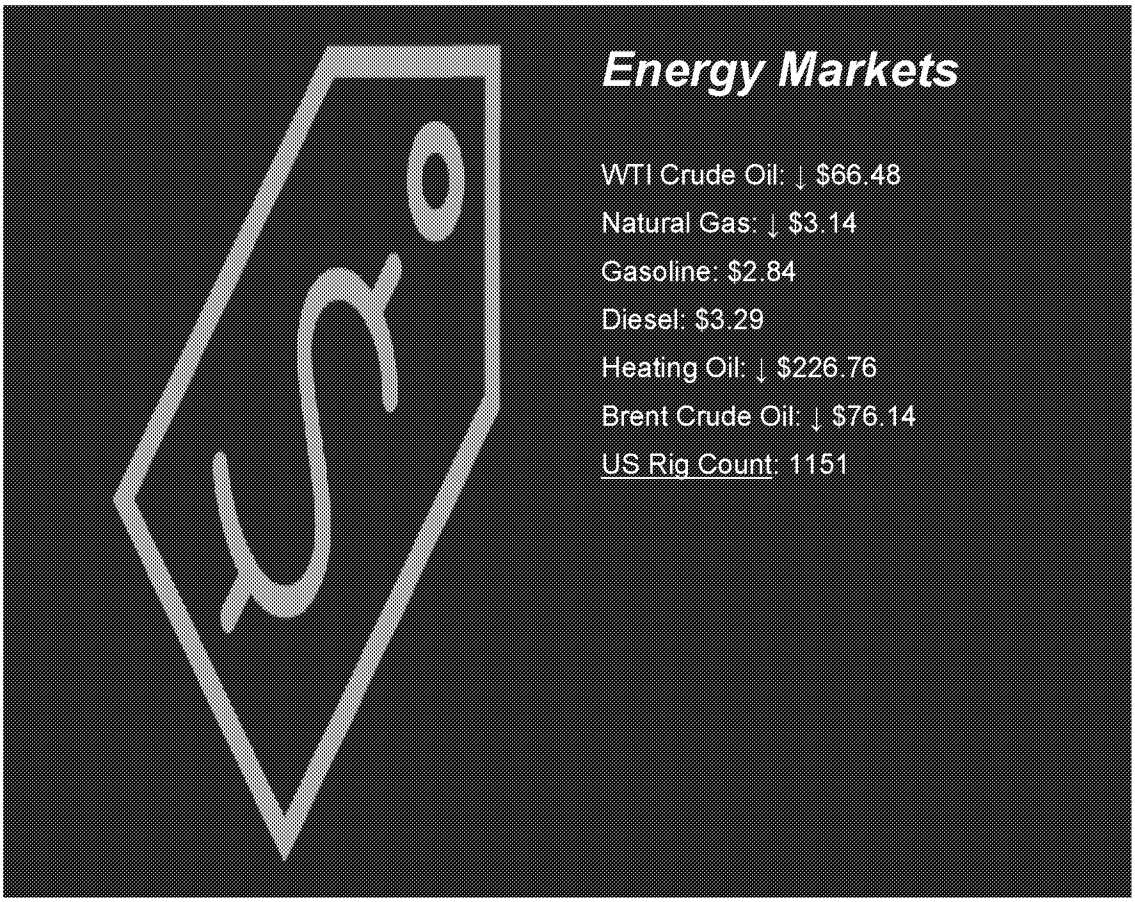

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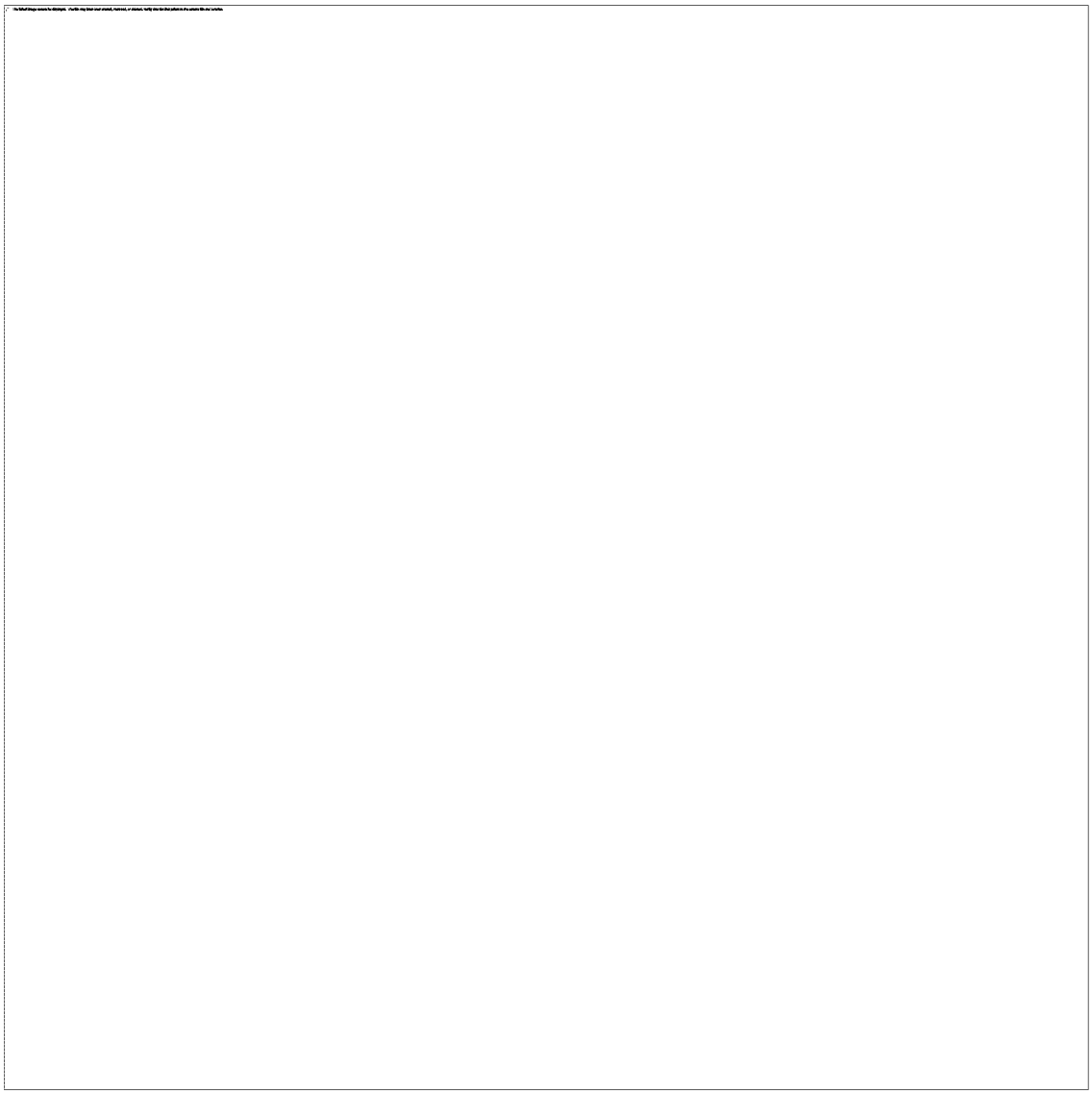
Trump is keeping his promises to forgotten coal communities.

Lexington Herald-Leader (11/14/18) reports: "The president has acted quickly to remove regulations that were stifling the coal industry. He signed legislation to overturn the costly Stream Protection Rule within one month of his inauguration and issued an executive order two weeks later reviewing the Waters of the United States rule. The next month, the president featured coal workers prominently in his plan for American energy independence. He proposed repealing the so-called Clean Power Plan; lifted the ban on federal leasing for coal production; removed job-killing energy industry regulations, and returned power over local economies to the states."


The Rollout Image exceeds the dimensions. Portions may have been cropped, truncated, or distorted. Verify that the pattern in the camera fills the entire frame.

"The European Union (EU) and some other developed countries are hurting their economies with energy-rationing policies such as carbon taxes and cap-and-trade programs. While making fossil energy more expensive is reducing emissions somewhat in these countries, it isn't doing much to reduce global emissions."

– Myron Ebell, Competitive Enterprise Institute

This is going to be fun...

The Guardian (11/15/18) reports: "His appointment, confirmed by Bolsonaro on Wednesday, is likely to send a chill through the global climate movement. Brazil

was where the international community first came together in 1992 to discuss reductions in greenhouse gas emissions. Its diplomats have played a crucial role in bridging the gap between rich and poor nations, particularly during the forging of the Paris agreement in 2015. But when the new government takes power in January, the foreign ministry that leads that work will be headed by a man who claims climate science is merely 'dogma'."

Democrats and Republicans eye working together on small-ball climate legislation.

Washington Examiner (11/16/18) reports: "Members of both parties see opportunities in a divided Congress next year for bipartisan action on clean energy development, even if comprehensive legislation meant to combat climate change remains far away... Democrats are eyeing a potential infrastructure package, which President Trump has also emphasized, as a key vehicle to achieve progress on clean energy. In particular, they would favor: improving energy efficiency in publicly funded projects; modernizing the electricity grid to accommodate the use of more wind and solar; rebuilding transmission and distribution lines to make them more resilient to severe weather events and wildfires; accelerating the deployment of electric vehicle

charging stations; and providing incentives for localities to purchase electric buses."

Let's just cut to a chase and bring a carbon tax to the House floor.

The Hill (11/14/18) reports: "House Democrats are planning to hold two days' worth of hearings on the impacts of climate change and potential solutions to it when they take the House majority next year. The likely chairmen of the Energy and Commerce, Natural Resources and Science committees said in a joint statement Wednesday that their panels will be an attempt to bring back climate debate after eight years of GOP control of the chamber, when leaders downplayed the issue. Democrats gained dozens of seats when they won the House last week, and have in part credited progressive activism to get them there. The early announcement of hearings is in part a bid to show climate activists that the Democrats take the issue seriously."

The activist approach to lawmaking.

Politico (11/15/18) reports: "A fight broke out in a closed-door meeting of House Democrats over climate change as a powerful veteran lawmaker fought with freshman star Rep.-elect Alexandria Ocasio-Cortez and other members-elect over the creation of a special panel for the issue. New Jersey Rep. Frank Pallone, incoming chairman of the powerful Energy and Commerce Committee

— backed by a number of other committee members — slammed the creation of the new climate panel, according to multiple sources in the room. Pallone argued that his committee and other existing panels within the House could take on the issue aggressively."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance
Myron Ebell, Competitive Enterprise Institute
Phil Kerpen, American Commitment
William O'Keefe, George C. Marshall Institute
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Joe Bast, Heartland Institute
David Ridenour, National Center for Public Policy Research
Grover Norquist, Americans for Tax Reform
Sabrina Schaeffer, Independent Women's Forum
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Rich Collins, Positive Growth Alliance

Craig Richardson, E&E Legal
The Honorable George Allen, American Energy Freedom Center
Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $57.66
Natural Gas: ↑ $4.16
Gasoline: ↓ $2.65
Diesel: ↓ $3.23
Heating Oil: ↑ $209.75
Brent Crude Oil: ↑ $68.11
US Rig Count: ↑ 1167

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Message

From: Maisano, Frank [frank.maisano@bracewell.com]
Sent: 10/1/2018 5:51:56 PM
To: Maisano, Frank [frank.maisano@bracewell.com]
Subject: Oct 1 PRG Energy Update: SCOTUS Fall Launch, ACE Hearing In Chicago, Mercury, Disaster Relief Reform

Friends,

The Ryder Cup offered some riveting golf from Paris, France over the weekend and once again, the home team prevailed. And the NHL season is finally back, and here in Washington (where yes, it seemed a bit shorter this year), we are all looking forward to Wednesday's home opener where the Capitals will raise that first Stanley Cup banner. But before that, I have to make it through a "sweet 16" birthday party for Olivia's best friend in a Cap One Arena suite at Maroon 5. Ouch…

On the policy side, the Supreme Court launches its Fall session today and expect to see a few environmental issues on its plate. It already said it will not review a freeze on uranium mining and will hear its first arguments on a challenge to the reach of the Endangered Species Act.

The President also announced a new trade agreement with Canada late last night. There is still a lot of details to dig through so I expect our trade experts will be able to get into the details tomorrow.

We also have seen several stories about the Trump Administration's effort on mercury – including a story Sunday in the *NY Times* and one today in the *Washington Post*. While the Administration is certainly moving forward on the regulation that received pushback from the SCOTUS in 2015, EPA has not said that it is going to revisit the emissions standards that coal-fired power plants have to meet under MATS, but are reconsidering a separate finding known as the "appropriate and necessary determination." But as many of you know – including my friends in the environmental community, even if EPA reverses the "appropriate and necessary determination," this doesn't mean that the MATS standards would be revoked which for the most part, despite the SCOTUS ruling, have been implemented. Of course, our experts can provide you background info.

Speaking of EPA, today it is hosting the public hearing on its proposed ACE rule, the replacement for the Clean Power Plan, at the Ralph H. Metcalfe Federal Building in Chicago. I have included testimony from the Chamber's Global Energy Institute, ERCC and the rural co-ops below but we are happy to answer any questions or address any misleading charges made by our friends In the environmental community about this rule. What may be most important to remember is the previous Obama CPP rule was stayed by the Supreme Court and was likely going to be illegal.

The Senate is in session this week while the House is not. The Senate is expected to take up a 5-year reauthorization of FAA approved by the House last week that includes the Disaster Recovery Reform Act (DRRA). In light of *Hurricane Florence* this year and last year's challenging storms, the Congress is making much-needed reforms to protect vulnerable communities in the future. DRRA makes the proactive investments America needs to limit the damage these extreme weather events can have and speed our ability to recover and rebuild. MIT expert Jeremy Gregory (jgregory@mit.edu) can tackle the topic. On the hearing side, Senate Energy takes on legislation tomorrow while Senate Commerce handles positive Train controls Wednesday and rural broadband on Thursday (NRECA is a great resource here). Finally, Senate Environment looks at EPA's Science issues on Wednesday afternoon.

Off the Hill, not a lot going on but the Atlantic Festival takes place this week in Washington will feature DOE's Rick Perry, Hillary Clinton, former Secretary of State Kerry and many more. The Energy Policy Institute at the University of Chicago (EPIC) hosts two panels: tomorrow they will host a panel of experts to explore the tension in energy and climate policy between the economically optimal and the politically realistic and Thursday a conversation with CARB head Mary Nichols. Finally, on Thursday, the Atlantic Council Global Energy Center hosts the launch of and discussion about Robert McNally's new book, *Crude Volatility* with panel experts including SAFE's Leslie Hayward and Platts' Brian Schied.

Most importantly, on Wednesday we launch for the 28th annual Society of Environmental Journalists convention in Flint. It is always a great time to get together and discuss the key environmental/energy political and policy issues we are facing today. Of course, Bracewell hosts its 16th annual SEJ reception on Thursday night and my colleague Jeff Holmstead jumps into the EPA plenary panel on Friday.

Call with questions. Best,

Frank Maisano
(202) 828-5864
c. (202) 997-5932

FRANKLY SPOKEN

"We are all pleased to have reached an agreement and to be moving forward with the construction of Vogtle Units 3 & 4 which is critical to Georgia's energy future. While there have been and will be challenges throughout this process, we remain committed to a constructive relationship with each other and are focused on reducing project risk and fulfilling our commitment to our customers."

All four of the Vogtle 3 & 4 project co-owners (Georgia Power, Oglethorpe Power, MEAG Power and Dalton Utilities) after voting to continue construction of the two new nuclear units near Waynesboro, Ga.

ON THE POD

Columbia Podcast Talks with Clean Energy Expert – On this edition of Columbia Energy Exchange, host Bill Loveless visits Greentown Labs in Somerville, MA, and meets with its CEO, Dr. Emily Reichert, to talk about the outlook for clean technology in the U.S. and what programs like hers can do to help entrepreneurs get off the ground. They discuss the pace and scale of clean energy innovation today as well as the investment climate for clean tech and some government programs that aim to help stimulate breakthroughs. Greentown Labs bills itself as the largest clean tech incubator in the U.S., with 100,000 square feet of space and more than 70 startup companies housed in a renovated century-old industrial complex just outside Boston. There, budding companies are building prototypes, developing business plans and taking other steps necessary for commercial success. Areas of focus among the companies include energy generation, distribution and storage; energy-efficient buildings; transportation, agriculture and robotics.

FUN OPINIONS

Grist Talks Disaster Resilience with MIT Expert – Grist featured MIT Researcher Jeremy Gregory in recent piece asking experts on how we should prepare for a future filled with dangerous storms like Hurricane Florence. Gregory said the key thing is building structures that are not just designed to withstand normal weather events, but built to last longer and withstand more extreme events. "Part of the challenge with that is a lot of structures built a long time ago aren't adequately prepared to sustain the increasing severity of storms. Gregory added that it's not even about entirely rebuilding structures. "Sometimes it's just about making sure that homes have a good connection between the roof and the walls and that you have protection for windows and doors. Because after the wind breaks that pressure seal, then a lot of the damage comes from the water. Gregory says a focus on quantitative life-cycle costs is an important key.

IN THE NEWS

ACI Report: Cleaning Products Industry Has $59 Billion Direct Impact on U.S. Economy – The cleaning products industry has a direct impact on the U.S. economy totaling $59.1 billion, supporting 64,000 jobs and including $8.3 billion of labor compensation, according to a new report released by the American Cleaning Institute (ACI). The report, prepared for ACI by the Manufacturing Institute's Center for Manufacturing Research in partnership with Inforum, examines economic data from 2016, the most recent year where full data is available. Approximately 53 percent of total cleaning product sales are from purchases by other industries. The data also show that the total economic impact of the cleaning

products industry – including upstream suppliers and downstream distributors – is $192 billion in output and encompasses 756,000 jobs.

FAA Reauth Approved in House – The House of Representatives passed a five-year reauthorization of the Federal Aviation Administration (FAA), which includes the Disaster Recovery Reform Act (DRRA). They also passed a one-week extension to give the Senate additional time to complete final passage – which is expected to pass as soon as next week. We will be monitoring it very closely. As it moves to final passage and final approval by President Trump, I hope you will consider exploring the topic for a story and discussing it with our experts at MIT.

Why it is important – Obviously, in light of Hurricane Florence this year and last year's challenging storms, the Congress is making much-needed reforms to protect vulnerable communities in the future. The Disaster Recovery Reform Act makes the proactive investments America needs to limit the damage these extreme weather events can have and speed our ability to recover and rebuild.

What Disaster Recovery Reform Does – The DRRA seeks to address the rising costs of disasters and reform the federal disaster program to ensure communities are better prepared in the future. DRRA is focused on pre-disaster planning and mitigation. DRRA highlights the importance of building durable evacuation routes and clarifies existing assistance programs to speed up inspections and ensure that a percentage of assistance is dedicated to pre-disaster hazard mitigation. The most important changes to the Stafford Act – which is how we pay disaster assistance – reduces restrictions for mitigation assistance and aims to ensure assistance is provided efficiently. The DRRA also mandates a FEMA guidance enabling cooperation with state and local governments in acquiring "open space" as a mitigation measure.

MIT Is Great Resource to Discuss Disaster Resilience, Rebuilding – As with nearly every issue, we at Bracewell have access to great resources on this topic as you consider covering it. Our friends at the MIT are experts on disaster resilience and recovery and have done significant research on many of the items that will improve how we look at rebuilding from disasters. MIT is already tackling this part of the extreme weather calculus. Jeremy Gregory, executive director of MIT's Concrete Sustainability Hub (CSHub), is pushing the frontier of academic research into building materials, with implications for policymakers, building designers, communities, and the vulnerable residents of hazard-prone areas.
They also have the MIT-developed Break-Even Mitigation Percent (BEMP) tool which helps community leaders, public officials, building designers and owners make better risk-informed decisions before the disaster hits. You can use the tool to calculate the BEMP for eastern U.S. coastal communities prone to damage from hazards related to hurricanes.

ACE Testimony from Chicago EPA Hearing – With today's EPA hearing in Chicago, I thought I would forward a few snippets of testimony from some resources.

Chamber Global Energy Institute – The Chamber Global Energy Institute Heath Knakmuhs told EPA today the ACE proposed rule is a refreshing departure from the dramatic and unlawful expansion of EPA authority that was embodied in the prior administration's Clean Power Plan (CPP). Quite simply, the CPP was a bad deal for America. It would have driven up electricity costs for businesses, consumers, and families, imposed tens of billions in annual compliance costs, and would have reduced our nation's global competitiveness.

ERCC Testimony – The Electric Reliability Coordinating Council says in the absence of legislation from the U.S. Congress to address climate change, market principles are generally the most sound basis upon which to proceed. States are in the best position to judge the inventory of measures available to reduce carbon emissions within their power sectors. That's consistent with decades of integrated resource planning that takes places at the state level, the shared responsibilities under the Clean Air Act, and the traditional federalism that governs utility regulation in most states. Finally, ERCC's Josh Zive argued that ACE also will help prevent the New Source Review program from being a barrier to the implementation of efficiency projects.

NRECA Testimony – The Rural Co-ops Jim Matheson touted the billions of dollars co-ops have invested in power plant development represent an investment in certainty of being able to provide power to consumers on a long-term basis.

The proposed ACE rule provides crucial flexibility so electric co-ops can respond to market conditions, technologies and industry changes at the same time they continue to contribute to the vitality and prosperity of the communities they serve. ACE adheres to the Agency's historic approach of applying section 111d of the Clean Air Act to power plant regulations. It is important to my members that the Agency interpret the law to fully consider the detrimental effects of prematurely closing facilities and causing electricity costs to increase.

Vogtle Project to Continue – The Vogtle nuclear project in Georgia will move forward, its owners said, after they reached an agreement following conditions set by both Southern and Oglethorpe Power Corp. The agreement, disclosed in filings with the Securities and Exchange Commission Wednesday, includes cost overage thresholds that, if exceeded, will require Georgia Power to pay a higher share of costs. It also includes a threshold above which the other owners could seek to be bought out by Georgia Power. The new units are the first to be built in the United States in more than 30 years and the only new nuclear units currently under construction in America. Expected on-line in November 2021 (Unit 3) and November 2022 (Unit 4), the new units are expected to generate enough emission-free electricity to power approximately 500,000 homes and businesses. Vogtle 3 & 4 is the largest jobs-producing construction project in the state of Georgia, employing more than 7,000 workers from across the country, with more than 800 permanent jobs available once the units begin operating. Progress and productivity continue to improve, illustrated by multiple recent achievements such as the placement of the first steam generator and both accumulators – a key component of the AP1000 reactor safety system – inside the Unit 4 containment vessel.

Marathon Closes Andeavor Merger – Marathon Petroleum has closed the transaction in which it acquired all of the outstanding shares of Andeavor. As of this morning, Andeavor ceased to be publicly traded and its common stock discontinued trading on the New York Stock Exchange. Marathon agreed to buy Andeavor in April for $23 billion to create a refiner that will benefit from access to booming U.S. shale fields and growing U.S. fuel export markets.

ON THE SCHEDULE THIS WEEK

EPA to Host ACE Hearing in Chicago – The EPA will host a single public hearing on its proposed replacement for the Clean Power Plan in Chicago today at the Ralph H. Metcalfe Federal Building. The building is the home of EPA's Region 5 headquarters.

AWEA to Hold Investment Conference – The American Wind Energy Association holds a two-day Wind Energy Finance & Investment Conference - East today and tomorrow at the Roosevelt Hotel in New York City. The event will look at off-take perspectives, the future of U.S. renewable energy, public markets, math behind the declining PTC, tax equity, utility perspectives, M&A outlook, legal perspectives and much more. Attendees will include top bankers, financial leaders, developers, corporate buyers and decision makers slated to gain fresh insights. Key topics include investor timelines, exploring emerging markets for investors and developers, examining how policy impacts wind industry finance, and learning how to maximize growth trends.

Cato Hosts Public Transit Debate – The Cato Institute holds a Capitol Hill forum today on the Federal role in public transit. Cato's Randall O'Toole and Jarrett Walker will debate. They will also hold a second round at Cato tomorrow.

EEI Speaker to Discuss Renewables – Today at 4:00 p.m., Johns Hopkins University ERE's Global Leaders Forum presents a discussion about the surge in US renewable energy consumption. In 2017 for the fourth successive year renewables accounted for more than 50 percent of the new US electric generation capacity additions. Steadily declining costs of wind and solar have been a major factor behind this surge, along with favorable policy support. The speaker, EEI's Lola Infante, will discuss these developments and describe which states are in the lead in expanding renewable sources of electricity as well as the future outlook.

Forum to Kick Off Smart Cities – CompTIA, the Smart Cities Council Policy Task Force, and the Smart Cities Caucus kick off Smart Cities Week – which returns to Washington, D.C. tomorrow to Thursday. This event will feature speakers who will share not only "what's next" on the road to more livable, workable and sustainable smart cities – but also how to get there. Speakers include Rep. Yvette Clarke, Chairperson of the Smart Cities Caucus.

Great Lakes Commission Meeting Set – The Great Lakes Commission holds its annual meeting tomorrow and Wednesday at The Conrad Hotel in downtown Indianapolis, Indiana. The meetings offer an opportunity for Great Lakes stakeholders to convene with colleagues and share perspectives on important Great Lakes issues.

Ideas Forum Set for DC – The Atlantic Council and Aspen Institute are hosting the Atlantic Festival on tomorrow to Thursday at Sidney Harman Hall n DC. DOE Sect Rick Perry, Hillary Clinton, Atlantic editor Jeffery Goldberg, former Secretary of State Sen. John Kerry and NYT reporter/author Mark Leibovich are among the numerous speakers. In its 10th year, Washington Ideas has become The Atlantic Festival. The conference always includes in-depth interviews with some of today's biggest thinkers and leaders in technology, politics, business and the arts, we will illuminate new ideas, and grapple with the most consequential issues of our time.

CSIS to Look at Nuclear Navy Issues – The Center for Strategic & International Studies and the Naval Historical Foundation host a symposium tomorrow about the history of nuclear power in the U.S. Navy, impacts the commercial nuclear energy industry has on the Navy, and key national security objectives. To discuss the historical context of this connection, the current state of affairs, and U.S. government action moving forward to mitigate the impacts of a declining nuclear power industry on the Navy and national security, CSIS is partnering with the Naval Historical Foundation to host this symposium.

JHU to Look at Clean Energy in Africa – Tomorrow at 10:00 a.m., Johns Hopkins University holds a conversation on access and clean energy in Africa with Andrew Herscowitz, Coordinator of the US Power Africa Program. Herscowitz will interview JHU Professor Johannes Urpelainen,

Senate Energy To Move Legislation – The Senate Energy Committee will hold a legislative hearing tomorrow at 10:00 a.m. on a number of bills including the "Restore Our Parks" Act.

EPIC to Hold Climate Challenge Forum – The Energy Policy Institute at the University of Chicago (EPIC) will host a panel of experts tomorrow at 5:30 p.m. that will explore the tension in energy and climate policy between the economically optimal and the politically realistic. Moderated by Emily Holden, environment reporter for Guardian US, the panel will Include Cal-Berkeley's Severin Borenstein, Michael Brune of the Sierra Club and former State Department advisor Trevor Houser. EPIC also holds a Thursday forum with Cal CARB head Mary Nichols moderated by *WaPo's* Juliet Eilperin.

Senate Commerce to Look at Positive Train Control – The Senate Commerce Committee will hold a hearing on Wednesday at 10:00 a.m. on the current status of implementation of positive train control (PTC), anticipated compliance with the statute, and the challenges with efforts to install and operationalize PTC systems. Witnesses FAA Ronald Batory, GAO Susan Fleming, NJ Transit head Kevin Corbett and Amtrak's Scot Naparstek.

TEPCO President to Look at Back at Fukushima – On Wednesday at 12:30 p.m., Johns Hopkins University hosts a forum on the Fukushima Daiichi Nuclear Power Plant accident. Steady progress has been made towards the reconstruction of Fukushima, the repopulation of surrounding areas, and the decommissioning of the plant, for which Tokyo Electric Power Company Holdings (TEPCO) will shoulder ¥16 trillion of the total ¥22 trillion estimated cost. Naomi Hirose, who endeavored to manage the Fukushima incident and spearheaded reform as President of TEPCO from 2012 to 2017, shares his insights into the current situation in Fukushima and elaborates on the implications of and lessons learned from the accident.

Senate Enviro Hearing to Look at EPA Science – The Senate Environment Committee hold a hearing on Wednesday at 2:15 p.m. looking at the EPA's implementation of sound and transparent science. Witnesses will include former Rep. Rush Holt (now AAAS head), University of Massachusetts, Amherst professor Edward Calabrese and Oxford's Robert Hahn.

JHU Looks at Green Finance in China – Johns Hopkins University SAIS Foreign Policy Institute, the Paulson Institute, the China Studies Program, and the Energy, Resources, & Environment Program hosts a forum on Wednesday at 4:30 p.m. on green finance in China.

SEJ in Flint – The Society of Environmental Journalism holds its annual conference on Wednesday to Friday in Flint. Of course, Bracewell hosts its annual event on Thursday night.

Forum to Look at Advanced Energy Tech – The Carbon Utilization Research Council (CURC) and DOE are hosting an Advanced Fossil Energy Technology Showcase Thursday in 902 Hart to highlight the innovation and progress being made to develop advanced, efficient power generation and carbon capture technologies and to convene a dialogue around the value of technology for help us meet our energy needs.

Senate Commerce to Look at Rural Broadband – The Senate Commerce Committee will convene a hearing on Thursday at 10:00 a.m. looking at broadband opportunities and challenges in Rural America. The hearing allows the Committee, as part of its ongoing efforts, to assess the progress of broadband deployment in rural America and continue to explore ways in which closing the digital divide will benefit American jobs and the economy. Witnesses include Godfrey Enjady of the Mescalero Apache Telecom, Golden West Telecommunications CEO Denny Law, Cheyenne River Sioux Tribe Telephone Authority GM Mona Thompson and Grant Spellmeyer of U.S. Cellular. Our friends at NRECA are always a good resource here.

ELI to Look at Waste Issues – Environmental Law Institute hosts a forum on Thursday at 12:00 p.m. on waste issues. Expert panelists will explore the future of American waste, the potential for transformative sustainable innovation, and the regulatory aspects hindering and helping to establish a circular economy. In doing so, the panel will explore the possibilities of designing circular, waste-free economic, legal, and regulatory models to foster a cradle-to-cradle lifespan of material goods. Expert panelists will lead a dialogue on integrating the legal, social, environmental, and economic challenges of meaningful solutions to American waste.

Atlantic Council to Look at Oil Issues – On Thursday at Noon, the Atlantic Council Global Energy Center hosts the launch of and discussion about Robert McNally's new book, *Crude Volatility: The History and the Future of Boom-Bust Oil Prices.* McNally makes sense of how oil became so central to our world and why it is subject to such extreme price fluctuations. After McNally's presentation, there will be an expert panel featuring SAFE's Leslie Hayward and former State Dept Official David Goldwyn. Platts Brian Schied will moderate.

Forum to Look at Utility of Future – Leaders in Energy will host a forum on Thursday evening October 4th at 5:30 p.m. at the US Navy Memorial looking at utilities of the future. Leaders in Energy event, in partnership with Resilient Virginia, will explore questions decarbonization and customer choice as well as examine pathways to a new paradigm for the electric grid. Speakers include EEI's John Caldwell, Cyril Draffin of the MIT Energy Initiative and EDF's Elizabeth Stein.

JHU to Discuss Offshore Wind – The John Hopkins University hosts a conversation on Friday at 12:30 p.m. on offshore wind development. OSW in the US has suffered from fits and starts over the past decade. During this time, Europe has installed 15,780 MW of offshore generating capacity, coming from 4,149 grid-connected turbines in 11 countries. Cumulatively, this represents Euro74.1 Billion (approx. US $91.8B of investment in the European offshore wind industry. But recent initiatives in several Northeastern states give cause for optimism that this time. Clean energy expert Robert Gurman will address the subject.

NAS Briefing To Feature DOE EM Official – The National Academies of the Sciences hold a web briefing on Friday at 1:00 p.m. featuring DOE EM Assistant Secretary Anne White.

USEA to Look at Colombia Electric Grid – On Friday at 2:00 p.m., the USEA will hold an overview of efforts to incorporate distributed energy resources (DER) onto Colombia's electricity grid. XM, Colombia's system operator, will discuss their recent efforts, future steps, and some ideas gleaned from recent visits to U.S. system operators. With the support of USEA through its Energy Utility Partnership Program under USAID, XM is currently working on a plan to adapt its operating processes to better allow the entry of renewable sources. Carlos Mario Correa and Francisco Gafaro of XM Colombia will give the presentation.

IN THE FUTURE

EPA to Host Meeting on Oil, Gas Wastewater Study – The EPA will host a public meeting on October 9th on an oil and gas wastewater study.

Brookings Forum Will Look at China – Next Tuesday at 10:00 a.m., the Brookings John L. Thornton China Center will convene a panel of experts to discuss China's environmental agenda at the international, national, and subnational levels. Experts will explore the relationship between growth and sustainability within China. They will also examine areas where China and other nations, including the United States, are cooperating to address climate issues through NGOs, think tanks, and regional governments, and where there might be space for expanded partnership. In addition, panelists will consider China's responsibilities for driving global climate action in an era of rising temperatures.

Potential Trump Visit to Iowa – President Donald Trump is expected to visit Council Bluffs, Iowa, next Monday to direct EPA to expand sales of ethanol.

JHU Book Looks at Energy Poverty Trap – Next Tuesday, October 9th at 5:00 p.m., Johns Hopkins University hosts the book launch of Professor Johannes Urpelainen new book on energy poverty. The book is the first comprehensive political science account of energy poverty and explores why governments have or have not been able to lead in providing modern energy to their least advantaged citizens.

ClearPath, EPIC, ACCF host Forum on R&D Investments – On October 10, The Energy Policy Institute at the University of Chicago (EPIC), in partnership with ClearPath and the American Council for Capital Formation, will hosting discussions on lessons gleaned from research and practical experiences. The conversations will provide insight into how to translate research findings into actionable policy and industry approaches that can drive clean energy innovation.

CSIS to Hear Equinor Energy Perspectives – On Wednesday, October 10th at 9:30 a.m., the CSIS Energy and National Security Program will host Eirik Wærness (Equinor) to present Equinor's Energy Perspectives 2018. Energy Perspectives summarizes different narratives about the future of global energy demand and energy mix within the parameters of various scenarios. These scenarios are based on different assumptions about regional and global economic growth, conflict levels, technological development, and energy and climate policies. The 2018 edition adjusts for last year's climate and energy developments, including technological advancements throughout the energy sector. Energy Perspectives is based on models and frameworks that Equinor uses to create long-term analyses of energy markets. The report is intended to foster greater understanding of uncertainty in the long term and what factors may affect this uncertainty.

WAPA Rally Set for VA Countryside – The Washington Automotive Press Association is hosting its 2018 Rally in the Virginia countryside on Thursday, October 11th at Summit Point Motorsports Park. As in the past, attendees will be able to experience a behind-the-wheel test of a large number of new vehicles from many automotive manufacturers. Representatives from the manufacturers will be on hand, so this is a great opportunity to network with them and other members.

CSIS to Host IEA – On Thursday October 11th, the CSIS Energy & National Security Program will David Turk of the International Energy Agency for a presentation and discussion on the IEA's upcoming report, *The Future of Petrochemicals: Towards a more Sustainable Supply of Plastics and Fertilizers.* This new report explores the future role of the petrochemical sector within overall oil demand and the global energy system.

Heritage Forum to Look at Nuclear Partnerships – The Heritage Foundation holds a forum on Thursday, October 11th at 9:00 a.m. to look at the successes of past nuclear partnerships and the need to continue and expand upon these relationships.

Cal Gov Official to Review Climate Summit – On Friday October 12th, the Environmental and Energy Study Institute (EESI) and the Business Council for Sustainable Energy (BCSE) hold a briefing on some of the outcomes of last month's Global Climate Action Summit. The briefing will showcase some of the carbon reduction actions being taken by a wide range of sub-national actors, including states, regions, cities, and companies. The overview of the Global Climate Action Summit will be provided by Dan Carol, Senior Advisor for Infrastructure and Energy, DC Office of CA Governor Jerry

Brown. This will be followed by a discussion panel of sub-national stakeholders from city and state governments, as well as business leaders.

Northam to Headline Offshore AWEA Wind Conference – AWEA will host its annual Offshore WINDPOWER Conference on October 16th and 17th in Washington DC. Virginia Governor Ralph Northam will speak at this year's Conference, along with Norwegian Energy Minister Kjell Børge Freiberg. Interior's James Bennett and our friends Stephanie McClellan of UDel's Wind Initiative and Bloomberg NEF's Ethan Zindler.

CSIS Looks at Indo-Pacific Clean Energy Transition – The CSIS Energy & National Security program will Host a conversation with Sen. Steve Daines on October 18th

Forum to Look at Wood – In recognition of National Forest Products Week, the Environmental and Energy Study Institute (EESI) hosts a forum on October 23rd on Capitol Hill that discusses an innovative class of structural wood building materials. This briefing will bring together experts to tell the emerging story of the U.S. mass timber industry and how to capitalize on its potential. Speakers will include Sen Angus King.

Shale Insight Set For Pittsburgh – Shale Insight 2018 is set for Pittsburgh on October 23-25. The Marcellus Shale Coalition (MSC) hosts the event along with the Ohio and West Virginia Oil & Natgas Assns. SHALE INSIGHT™ offers insightful pre-conference workshops, technical and public affairs sessions, national keynote addresses, and high-powered networking sessions will provide attendees, sponsors, and exhibitor's unprecedented access to the industry's most influential leaders and innovators. You can see the agenda HERE.

FRANK MAISANO
Senior Principal
Ext. 5864
Policy Resolution Group

Message

From: Konkus, John [konkus.john@epa.gov]
Sent: 10/1/2018 5:49:40 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: RE: AP requesting interview with EPA radiation-protection officials regarding LNT standards vs. threshold, hormetic standards

Deliberative Process / Ex. 5

From: Woods, Clint
Sent: Monday, October 1, 2018 1:49 PM
To: Konkus, John <konkus.john@epa.gov>
Subject: Re: AP requesting interview with EPA radiation-protection officials regarding LNT standards vs. threshold, hormetic standards

Deliberative Process / Ex. 5

On Oct 1, 2018, at 12:48 PM, Konkus, John <konkus.john@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Woods, Clint
Sent: Monday, October 1, 2018 1:44 PM
To: Konkus, John <konkus.john@epa.gov>
Subject: Re: AP requesting interview with EPA radiation-protection officials regarding LNT standards vs. threshold, hormetic standards

Deliberative Process / Ex. 5

On Oct 1, 2018, at 12:37 PM, Konkus, John <konkus.john@epa.gov> wrote:

Clint can you help with this? Deliberative Process / Ex. 5

From: Knickmeyer, Ellen [mailto:EKnickmeyer@ap.org]
Sent: Monday, October 1, 2018 1:33 PM
To: Konkus, John <konkus.john@epa.gov>
Cc: Jones, Enesta <Jones.Enesta@epa.gov>; Press <Press@epa.gov>; Edwards, Jonathan <Edwards.Jonathan@epa.gov>; Veal, Lee <Veal.Lee@epa.gov>; Griggs, John <Griggs.John@epa.gov>
Subject: RE: AP requesting interview with EPA radiation-protection officials regarding LNT standards vs. threshold, hormetic standards

Hi, John,
On the part of the Transparency rule that deals with dose-response for radiation and chemicals, and says regulators should consider alternate theories in addition to LNT, did Edward Calabrese and or Steven Milloy play a role in crafting it?
Best,
Ellen

From: Konkus, John <konkus.john@epa.gov>
Sent: Friday, September 14, 2018 10:53 AM
To: Knickmeyer, Ellen <EKnickmeyer@ap.org>
Cc: Jones, Enesta <Jones.Enesta@epa.gov>; Press <Press@epa.gov>; Edwards, Jonathan <Edwards.Jonathan@epa.gov>; Veal, Lee <Veal.Lee@epa.gov>; Griggs, John <Griggs.John@epa.gov>
Subject: RE: AP requesting interview with EPA radiation-protection officials regarding LNT standards vs. threshold, hormetic standards

The Radiation Health Effects site reflects recent information and was last updated in July 2018.

EPA's proposed rule on Strengthening Transparency in Regulatory Science did not discuss radiation. The Agency did seek comment on increasing transparency of the assumptions underlying dose response models. As noted previously, the timeline for any future action on this proposal has not yet been determined and EPA is reviewing more than 500,000 comments.

EPA continues to use the linear-no-threshold model for population-level radiation protection purposes. The EPA's Radiation Protection Program acknowledges uncertainty regarding health effects at low doses and is supportive of continued research in this area. More information in support of this approach can be found in the International Commission on Radiological Protection Report 103 and the 2018 National Council on Radiation Protection and Measurements Commentary 27.

From: Knickmeyer, Ellen [mailto:EKnickmeyer@ap.org]
Sent: Friday, September 14, 2018 8:34 AM
To: Konkus, John <konkus.john@epa.gov>
Cc: Jones, Enesta <Jones.Enesta@epa.gov>; Press <Press@epa.gov>; Edwards, Jonathan <Edwards.Jonathan@epa.gov>; Veal, Lee <Veal.Lee@epa.gov>; Griggs, John <Griggs.John@epa.gov>
Subject: Re: AP requesting interview with EPA radiation-protection officials regarding LNT standards vs. threshold, hormetic standards

Thank you.

Sent from my iPhone

On Sep 14, 2018, at 8:30 AM, Konkus, John <konkus.john@epa.gov> wrote:

> Ellen: We're working on something more robust for you. Should have it this morning.
>
> John
>
> Sent from my iPhone
>
> On Sep 14, 2018, at 5:52 AM, Knickmeyer, Ellen <EKnickmeyer@ap.org> wrote:
>
> > Hi, Enesta,

That EPA website entry you sent me a link to seems to be a contradictory statements saying exposures below 10 rem usually have no harmful health effects but the EPA still follows the guideline that no exposure is safe.

When does that entry date from? When was it revised and what part was revised?

Your other statement provides no information at all, except to indicate the EPA may decide to reverse its longstanding policy on radlation exposure without any advance notice to the public it is considering doing that.

Can you answer my questions and provide an EPA expert to speak to? These are non-answers and public silence on important public health questions for Americans.

Best,
Ellen

Sent from my iPhone

On Sep 13, 2018, at 6:01 PM, Jones, Enesta <Jones.Enesta@epa.gov> wrote:

> Ellen,
> I inadvertently cut off the end of our response. Here it is:
>
> Find more information here: https://www.epa.gov/radiation/radiation-health-effects
>
> Ellen,
>
> "EPA is currently reviewing the more than 590,000 comments on the Strengthening Transparency in Regulatory Sciences proposal. The EPA will determine a timeline for a decision after it has more fully assessed the comments." — **EPA spokesperson**
>
> On Sep 13, 2018, at 10:32 AM, Knickmeyer, Ellen <EKnickmeyer@ap.org> wrote:
>
> Hello – wanted to also ask, is this still EPA policy?

https://www.epa.gov/sites/production/files/2015-05/documents/low-dose-284-291.pdf
"Radiation protection, like the regulation of other carcinogenic agents, is—in the absence of compelling evidence to the contrary—predicated on the linear, no-threshold (LNT) hypothesis, which assumes that the risk of cancer due to a low dose exposure is proportional to dose, with no threshold."

"Given the current state of the science, the consensus positions of key scientific and governmental bodies, as well as the conservatism and calculational convenience of the LNT assumption, it is unlikely that EPA will modify this approach in the near future."

Best,
Ellen

From: Knickmeyer, Ellen
Sent: Thursday, September 13, 2018 10:06 AM
To: 'press@epa.gov' <press@epa.gov>; 'Konkus, John' <konkus.john@epa.gov>
Cc: 'edwards.jonathan@epa.gov' <edwards.jonathan@epa.gov>; 'veal.lee@epa.gov' <veal.lee@epa.gov>; 'griggs.john@epa.gov' <griggs.john@epa.gov>
Subject: AP requesting interview with EPA radiation-protection officials regarding LNT standards vs. threshold, hormetic standards

Hi, all,
I'm doing a story on the current EPA expressing openness to moving away from the linear non-threshold standard for radiation protection and toward standards that maintain lower doses of radiation and other carcinogens can be of acceptably low risk or beneficial. That's as with Dr. Calabrese's

comments in April on Mr. Pruitt's proposed science "transparency" rule, which the EPA cited in announcing the proposal:

Dr. Edward J. Calabrese, Professor, Environmental Health Sciences, University of Massachusetts: "The proposal represents a major scientific step forward by recognizing the widespread occurrence of non-linear dose responses in toxicology and epidemiology for chemicals and radiation and the need to incorporate such data in the risk assessment process

And as with last year's EPA guidance last year that emergency responders can safely tolerate "low doses" of radiation

https://www.epa.gov/sites/production/files/2017-07/documents/pags_comm_tool_p9.pdf

I need to finish the story by Tuesday afternoon. Can you please make an EPA radiation-protection or analytics senior official available to talk to me by Monday on the topic? Where has the EPA moved since April on the LNT vs. threshold vs. hormesis argument, have there been any more moves within EPA away from LNT, and what are EPA radiation officials' thoughts on the topic?

All best,
Ellen Knickmeyer
202 641 9487
415 699 0865
eknickmeyer@ap.org
ellen.knickmeyer@gmail.com

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Message

From: Rebecca Primis [primis@spn.org]
Sent: 10/9/2018 12:44:41 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: SPN Annual Meeting: Tonight's receptions, Kim Scott book signing, and more

SPN 26th Annual Meeting: Highlights for Tuesday, Oct 9

The official kickoff for SPN's 26th Annual Meeting takes place tonight at the Welcome Reception hosted by the Libertas Institute.

When: Tuesday, October 9 | 6:00 p.m. -- 7:30 p.m.
Where: Grand America: Connections Lounge/Imperial Ballroom

In celebration of Utah's first-in-the-nation law to exempt minors from having to obtain any permit or license, tonight's reception will include Libertas' Children's Entrepreneur Market. Bring cash, as well as your business cards, and come prepared to meet the state's next generation of entrepreneurs and purchase some Utah souvenirs! See the list of products and vendors.

Find out more about the Libertas Institute's work.

Book sale & signing with Kim Scott, author of *Radical Candor*

When: Tuesday, October 9 | 5:45 p.m. - 6:30 p.m.
Where: Grand America: Imperial Ballroom Foyer

Don't miss this chance to meet our kick-off plenary speaker Kim Scott and talk with her personally about her best-selling book, *Radical Candor: Be a Kick-Ass*

Boss Without Losing Your Humanity. Buy your own copy and she'll sign it for you!

Wednesday breakfast: best-selling author Kim Scott

When: Wednesday, October 10 | 8:00 a.m. -- 9:15 a.m.
Where: Grand America: Grand Ballroom

Bad management at all levels in an organization kills innovation, stifles growth, increases costs, and creates instability. Great management stems from relationship-building. Join us for breakfast with best-selling author, Kim Scott, who will share three basic principles for building great relationships as a manager. Discover how relationships can become a source of growth and stability for your organization.

Tuesday's receptions

After the Welcome Reception sponsored by Libertas Institute, there are multiple receptions taking place from 7:30 p.m. -- 8:30 p.m. These are excellent opportunities to jumpstart your networking and connect with your professional peers.

- Communication Reception sponsored by The Heritage Foundation in the Venezia Garden Salon
- Development Reception sponsored by ClearWord Communications Group, Inc., in Envoy
- Operations Professionals Reception in Savoy

- Policy and Outreach Reception in Savoy

The Cigar Reception (cigars supplied by Part2Events) will take place 9:30 p.m. -- 11:00 p.m. in the Imperial Ballroom/Garden Courtyard. In the event of rain, an alternate indoor location will be announced.

Registration & check-in

Location: Grand America: Murano Garden Salon
Today's Hours: 7:00 a.m. to 9:00 p.m.

Pre-conference sessions
If you are registered for pre-conference sessions today, you can check in at the registration desk starting at 7:00 a.m. today. Be sure to bring your photo I.D. as you will need to show it in order to check in. SPN staff will provide you with maps of the hotel and instructions on how to get to your session.

General check-in and on-site registration
Location: Grand America: Murano Garden Salon

Once you have checked into your hotel room, visit registration & check-in to pick up your badge and welcome bag. **A badge is required to get into all Annual Meeting activities.** You will need to show your photo I.D. at check-in, so be sure to bring it with you.

Additional registration and check-in hours:
Wednesday, October 10, 7:00 a.m. - 7:00 p.m.
Thursday, October 11, 7:00 a.m. - 7:30 p.m.
Friday, October 12, 7:00 a.m. - 12:00 p.m.

Reminder: Attendees must have their badges visible at all times to access Annual Meeting sessions and activities.

Exhibitor check-in

Exhibitors should go to the Imperial Ballroom/Connections lounge to check in.

GES will ensure your booth items or any shipments you sent in advance are placed at your assigned booth space. The GES Exhibitor Service Center will be set up near the Imperial Ballroom, and a representative will be available to answer any questions you may have.

Set-up hours: Tuesday, October 9, 2018: 11:00 a.m. - 4:00 p.m.

The Connections Lounge and exhibitor halls will open to attendees at 5:00 p.m. on Tuesday.

Sign up for the 5K for Freedom

If you are planning to participate in this year's 5K for Freedom, make sure you sign up when you check in at the registration desk (even if you've previously expressed interest). Because the race will take place off-site and transportation will be provided, we need to have an accurate head count in advance. A big thanks to The Policy Circle for their sponsorship of the run!

Important: Annual Meeting social media policy

The SPN Annual Meeting is invitation-only, and as such, much of the content cannot be publicly shared outside of the conference.

All breakout and workshop sessions are off the record. Live tweeting, recording video, posting pictures, or sharing content from the sessions are expressly prohibited.

Attendees are free to post content or pictures from the plenary sessions, breaks, and personal outings in Salt Lake City. Please respect other attendees'

privacy when posting photos and consider the context when quoting or paraphrasing.

The Annual Meeting app

Your best friend and resource before and during Annual Meeting is the SPN Annual Meeting app. With the Annual Meeting app, you have the full agenda, attendee roster, exhibitor and sponsor list, maps, and more at your fingertips.

How to download the app

The app is password-protected and involves a brief attendee verification step. To download the app, follow the instructions below:

1. Search for "SPN 26th Annual Meeting" in the iPhone or Android app stores.

2. To download, input this password: **AM26UT**

3. After the app has downloaded to your device, open it and tap "Log in for more features" in the upper left.

4. Follow the prompts on the screen to set up your profile. Pro-tip: Be sure to use the email address you used when registering for the conference. The app uses the email to verify that you are on our list of registered attendees.

5. A 4-digit verification code will be sent to your email. After you enter this code in the app, your profile will be active and all content will be accessible.

Pro-tip: Be sure to completely fill out your profile and make it public. The "Attendees" section is a searchable version of our attendee roster, so make sure other attendees can find you there!

For more information about how to use the app once you've downloaded it, check out our 5 Best Ways to Use the Annual Meeting App or explore the FAQs section inside the app for ideas and tutorials.

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Message

From: Tubb, Katie [Katie.Tubb@heritage.org]
Sent: 5/14/2019 10:26:38 AM
To: Woods, Clint [woods.clint@epa.gov]
Subject: RE: Re:

Good morning Clint, and great to hear from you. I'm sorry it's now me that missed your email – I was out of town the end of last week. That said, is there a time that's convenient to you later this week to talk? (if this helps, my Friday is entirely open right now)

Katie

Katie Tubb
Senior Policy Analyst, Energy and Environmental
Institute for Economic Freedom
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
202-675-1767
heritage.org

From: Woods, Clint <woods.clint@epa.gov>
Sent: Thursday, May 9, 2019 11:15 AM
To: Tubb, Katie <Katie.Tubb@heritage.org>
Subject: Re:

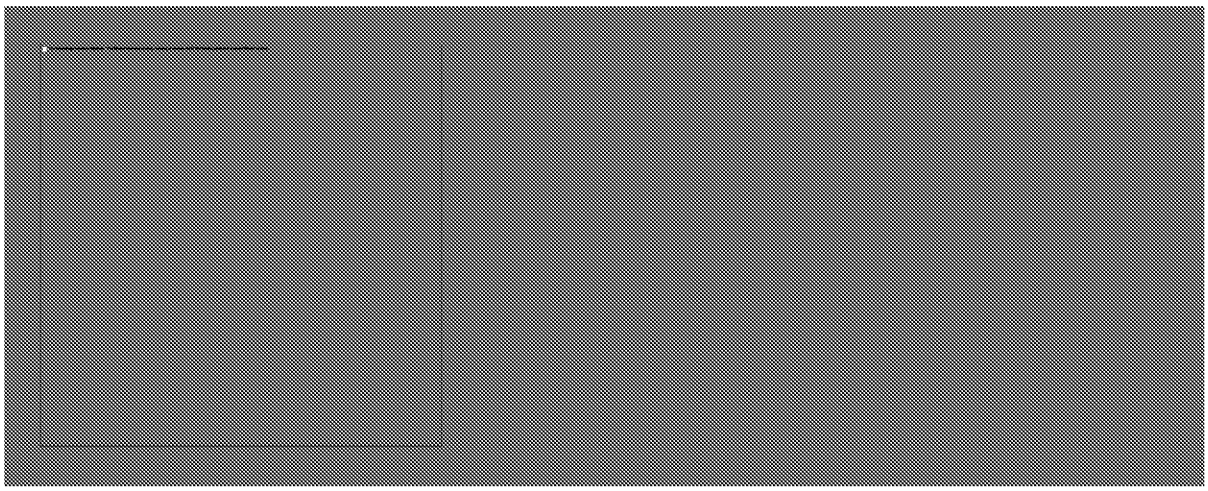
Katie,

Thanks so much for your email, and sorry for my delay (for some reason, your 2 emails ended up in my spam folder). Would welcome the chance to talk - Any chance there might be a good time to talk tomorrow? Maybe 11 or noon?

Clint
202.564.6562

Message

From: Institute for Energy Research [info@ierdc.org]
Sent: 11/15/2018 3:22:06 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: [SPAM-Sender] Paris Climate Scam Exposed Again



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SURGING

IER analysis of new data from the EPA reveals that despite President Trump removing the United States from the Paris climate agreement, the country has again reduced CO2 emissions in 2017, while many signatory nations are failing

to meet their commitments:

"U.S. carbon dioxide emissions in 2017 are the lowest since 1992 and per-capita emissions are the lowest since 1950.

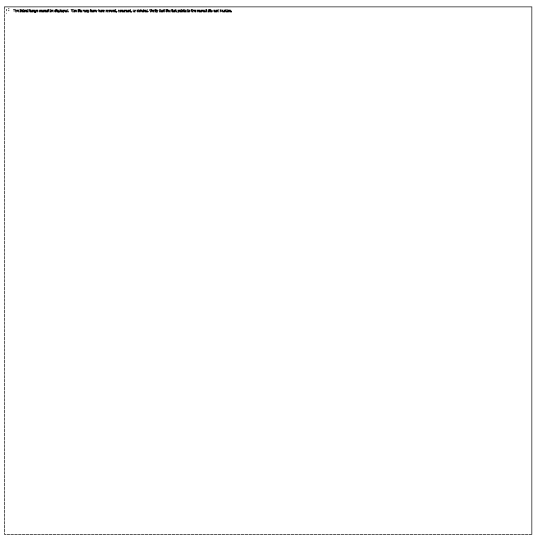
According to Acting EPA Administrator Andrew Wheeler, ***'These achievements flow largely from technological breakthroughs in the private sector, not the heavy hand of government.'***

In contrast, greenhouse gas emissions globally increased in 2017 and are set to increase to historic highs by the end of this year, despite the Paris climate accord."

Read the full breakdown here.

From The Studios

Why Are So Many Coal Plants Shutting Their Doors?



The team sits down with Isaac Orr, a policy fellow at the Center of the American Experiment, to discuss energy policy in Minnesota and what is fueling the trend of premature retirement for coal plants across the country.

Listen now to *Plugged In* episode #9: Isaac Orr on energy in Minnesota

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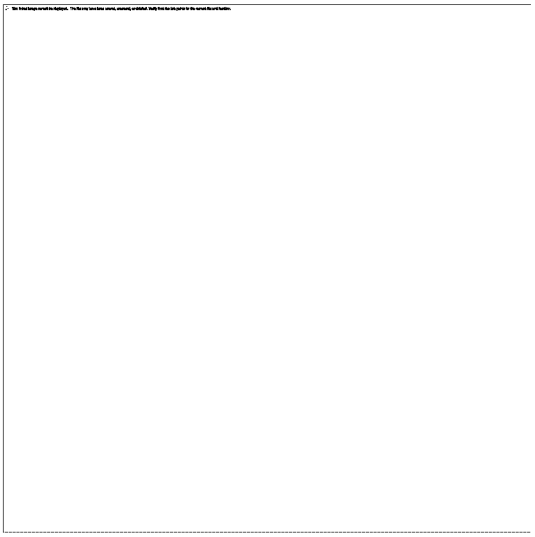

Latest Analysis

- West Coast Offshore Wind Lease Sales
- New Rule Could Increase Ship and Airline Prices
- Electricity Demand Up, But Coal Retirements Increasing

THE WIRE

IER News Highlights

THE BUZZ

IER on Social Media

- IER senior economist Bob Murphy interviewed on the *Economics Detective* podcast
- IER policy analyst Jordan McGillis quoted by the Heartland Institute on new shipping regulations

- Over 128k total people Reached
- Over 200 interactions on Tweets
- Over 1,700 interactions on Facebook posts

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THE BREAKER

"Of course, peer review is not perfect. However, cynical folks might be forgiven for thinking that this ocean warming paper is an example of a study confirming the prevailing scientific shibboleths being subject to far

less scrutiny than those that might challenge them."

– Ronald Bailey, science correspondent for *Reason Magazine*

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Message

From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 1/25/2019 1:23:05 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: He's coming for you.

View this email in your browser

MORNING ENERGY NEWS | 1.25.2019

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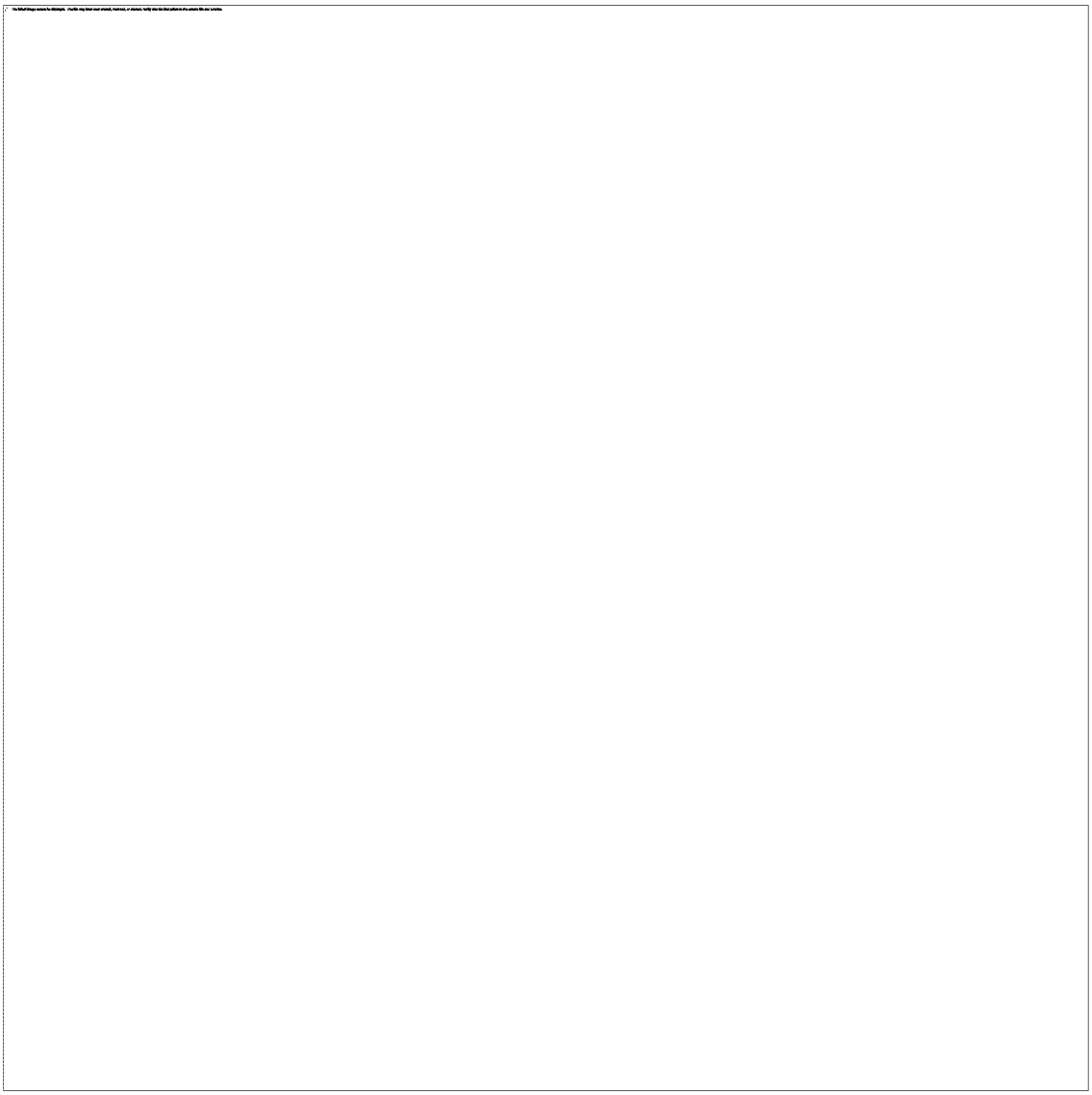
When the Green Reaper comes to call, words fail - they're just too small.

Reason (1/24/19) column: "In what is basically a *30 Rock* episode come to life, the federal Department of Energy designed and purchased a mascot costume to warn children about the dangers of environmental catastrophe—and to haunt their dreams, apparently.Thanks to a FOIA request from journalist Emma Best, the details of which were published this week at *Muckrock*, we now know a bit more about the history of the Green Reaper—a verdant version of the Grim Reaper that manages to combine the ominous presence of the original with the vacant eyes of a cartoon character. While the mascot seems best suited to shatter children's innocence by informing them about the inevitabilty of their own deaths, the documents the Green Reaper, which was designed in 2012, was intended to be used in 'community outreach presentations to local elementary school children' and in internal memos reminding government workers to conserve energy and carpool when possible."


The Rollout Image cannot be displayed. Viewer may lower your security, trust zone, or access file on a local disk.

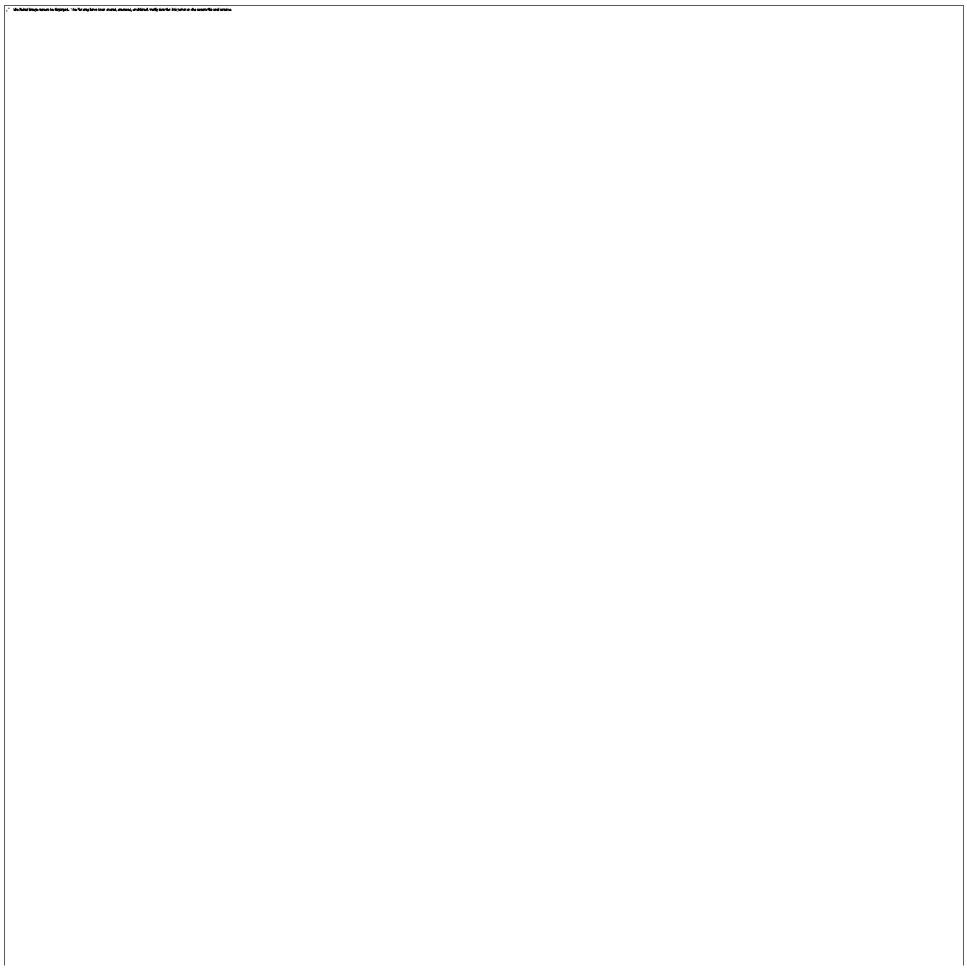
"The Green New Dealers' self-righteous fanaticism and ideological enthusiasm for a collectivist America should not be underestimated. Understanding their misguided political assumptions and the damaging economic consequences that would follow from their coming to power is essential if a 'green' road to serfdom is to be avoided."

– Richard Ebeling, American Institute for Economic Research

"C'mon, work with me here—we can get this to fit the narrative, too. Why do you think

we changed it from global warming to climate change."

Think Progress (1/24/19) blog: "Early this week, record cold blasted the Northeast, as Boston, Massachusetts saw a high of 10°F, and nearby Worcester saw the temperature top out at just 1°F. Meteorologists say this is just the beginning of a lengthy stretch of freezing weather. Paradoxically, frosty winter temperatures in some areas have been linked to rising temperatures around the globe. Climate change is distorting weather systems, yielding colder winter weather in parts of the world, including much of the United States. One reason for this phenomenon is a weakening of the polar jet stream, the air current circling the Arctic."



When you have the levers of government power at your command, anything is possible.

Deloitte (1/21/19) memo: "An additional 21 million electric vehicles (EVs) will be on the road globally over the next decade, according to new analysis from Deloitte. Deloitte's research shows the pace of global EV adoption, rising from two million units in 2018, to four million in 2020, 12 million in 2025, before rising to 21 million in 2030. By 2030, Battery Electric Vehicles (BEVs) will significantly outperform the rest of the EV market, accounting for 70% of total EV sales. Deloitte's analysis points to two factors in accelerating BEV uptake: growing consumer demand for greener vehicles, coupled with government policies that offer financial incentives while placing inner-city restrictions for gasoline and diesel vehicles."

We've dismantled the "dividend." Time to shatter the myths that remain.

Quartz (1/22/19) column: "More people support a carbon tax earmarked for climate fixes rather than one that puts money into their own

pockets. That surprising finding challenges conventional wisdom on the best way to get a carbon tax over the Congressional finish line in the US. The Associated Press and NORC Center for Public Affairs Research, a non-partisan institution at the University of Chicago, polled 1,202 Americans on the question last November. Before being told how the funds would be used, just 44% of those surveyed said they would support a carbon tax. Support rose when respondents were told how the funds would be used. The highest support came when the survey question stated that proceeds from carbon tax would be used for environmental restoration (67%), research and development for clean energy (59%), and public transportation (54%)."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance
Myron Ebell, Competitive Enterprise Institute
Phil Kerpen, American Commitment
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Grover Norquist, Americans for Tax Reform
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste

Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Craig Richardson, E&E Legal
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jason Hayes, Mackinac Center
David Williams, Taxpayer Protection Alliance
Paul Gessing, Rio Grande Foundation
Seton Motley, Less Government
Hon. Tim Huelskamp, Ph.D., The Heartland Institute

Energy Markets

WTI Crude Oil: ↓ $53.09
Natural Gas: ↑ $3.11
Gasoline: $2.27
Diesel: $2.93
Heating Oil: ↓ $187.92
Brent Crude Oil: ↓ $60.89
US Rig Count: ↓ 1087

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Message

From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 1/23/2019 2:03:59 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: You're as cold as ice

View this email in your browser

MORNING ENERGY NEWS | 1.23.2019

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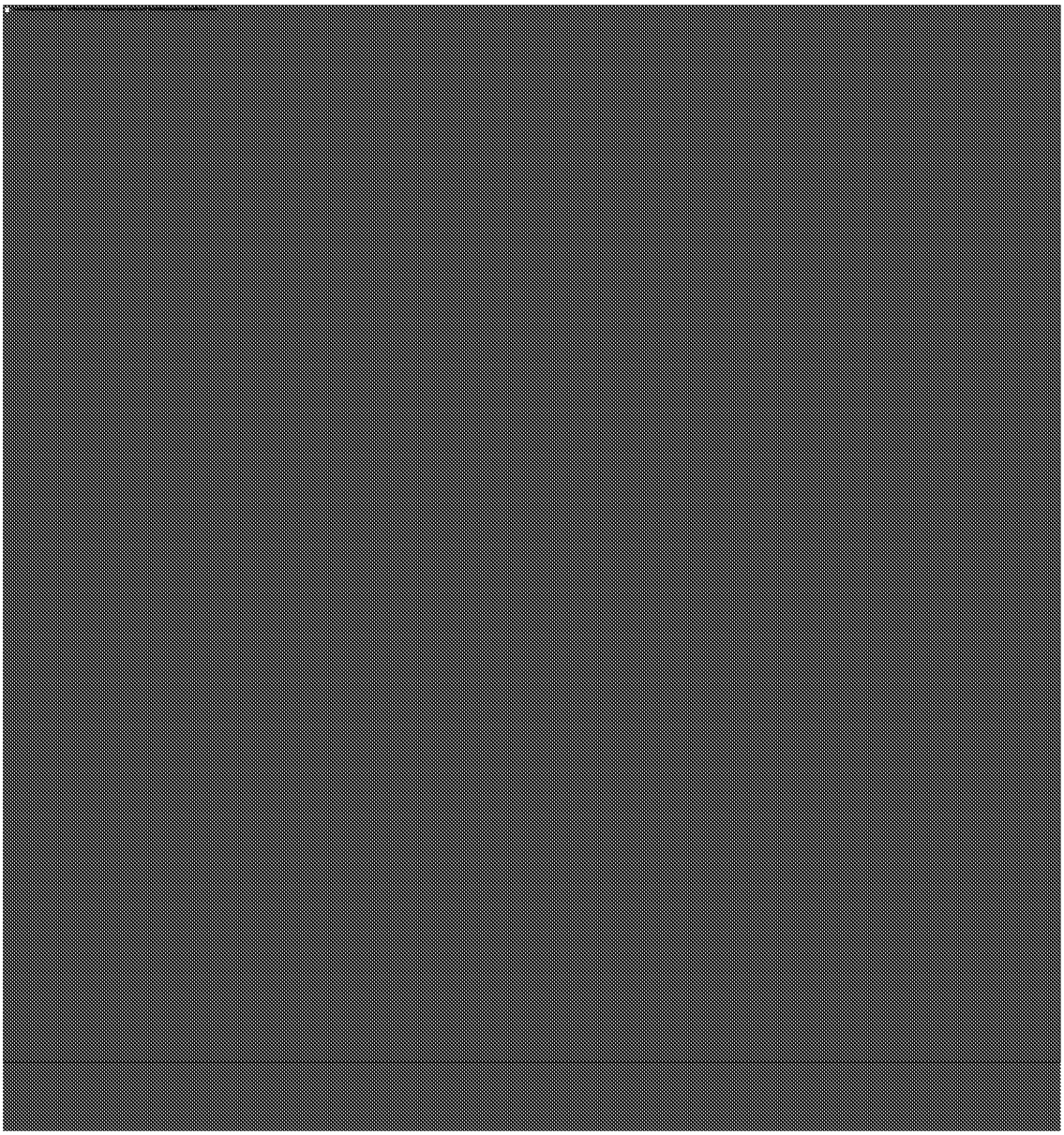
Support for D.C. EVs grows cold.

Utility Drive (1/22/19) reports: "Pepco has cut the budget for its transportation electrification proposal in the District of Columbia, but the city's consumer advocate says even with the reductions it cannot support the plan. 'The application does not justify the Company's request for over $10 million dollars in ratepayer contributions and no proposed Company investment," OPC told Utility Dive in an email. "We recognize the value of being flexible in an evolving and developing market. However, protecting ratepayer interest will remain a primary concern for the Office of the People's Counsel'... 'Much of Pepco's overall program methodology — that is, providing and owning ratepayer funded EV charging infrastructure — is detrimental to the competitive EV market,' OPC said in comments. 'This intrusion into the private sector is unnecessary ... Allowing Pepco to subsidize its own charging stations with ratepayer funds would discourage cost-effective investment in charging stations by private entities who lack the benefit of ratepayer subsidies.'"



Guess the yellow vests are finally getting their point across.

Euractiv (1/21/19) reports: "France and Germany will cement their historic post-war reconciliation with the signing of a new Elysée treaty on Tuesday (22 January). But the draft text, seen by EURACTIV, no longer mentions carbon pricing among new bilateral initiatives... One year ago, on the treaty's 55th anniversary, the German Bundestag and the French National Assembly published a first version of the new Elysée treaty, which mentioned new 'comm initiatives' on carbon pricing to fight climate change. But the document that will be signed tomorrow, seen by EURACTIV, no longer mentions the idea. Instead, two broader paragraphs address general issues such as sustainable development, climate change, the environment and economic affairs."

"For developing countries, the economics of wind and solar mean that the more renewables they have, the more it costs to build out a proper grid and invest in reliable generation. It is simply immoral to expect developing countries to solve the intermittency problem that has defied solution by the best brains in the West and inflict higher energy costs on those who can least afford them."

– Rupert Darwall and Myron Ebell, in *The Washington Times*

You think Democrats will sign on to a carbon tax? Yeah right...

The Atlantic (1/18/19) reports: "Late last week, more than 600 environmental groups published a letter laying out an environmental agenda for the new Congress. The groups did not explicitly describe a Green New Deal, but their sought-after legislative program looked and quacked a lot like one. They demanded an all-renewable power grid, an end to fossil-fuel exports, and a ban on gas-powered cars by 2040...The letter seemed like the standard collection of progressive climate goals, but on closer inspection it veered into new and controversial territory, especially in the places where the groups said what they would *not* support. They promised to 'vigorously oppose' any legislation that promoted nuclear power, hydroelectric power, and carbon capture and storage, a still-experimental technology that could remove carbon dioxide directly from the atmosphere. They also forbade Congress to use any 'market-based mechanism' to administer climate policy."

Almost makes you think the science isn't so settled.

International Journal of Science (1/15/19) reports: "Forest schemes got a big boost from the 2015 Paris climate accord, which for the first time counted all countries' efforts to offset their carbon emissions from fossil-fuel use and other

sources by planting or protecting forests. China aims to plant trees over an area up to four times the size of the United Kingdom. California is allowing forest owners to sell credits to CO2-emitting companies, and other US states are considering similar programmes, which could motivate projects that establish new forests and protect existing ones... Many scientists applaud the push for expanding forests, but some urge caution. They argue that forests have many more-complex and uncertain climate impacts than policymakers, environmentalists and even some scientists acknowledge. Although trees cool the globe by taking up carbon through photosynthesis, they also emit a complex potpourri of chemicals, some of which warm the planet... At the same time, some researchers worry about publishing results challenging the idea that forests cool the planet. One scientist even received death threats after writing a commentary that argued against planting trees to prevent climate change."

Global "clean fuel" rules mean more expensive energy for Americans.

Washington Examiner (1/20/19) reports: "Oil prices are set to go up by this time next year, along with jumps in the price of diesel fuel that could make transporting food and goods more expensive, according to an analysis released by the Energy Information Administration last week that also delved into the

causes of the looming price increases and its effects of consumers. The analytical agency pointed out that, beginning on Jan. 1, 2020, new clean fuel rules go into effect for all cargo vessels and ships mandating that they switch out dirty bunker fuel for cleaner low-sulfur fuels. Bunker fuel is the type of thick, sometimes tar-like, oil used in marine vessels. The agreement was endorsed by dozens of countries, including the U.S., under the International Maritime Organization, a large international grouping formed under the United Nations. The U.N. maritime group decided to implement the agreement as part of a plan to cut pollution from ships."

¿Porque no los dos?

News Herald (1/22/19) opinion: "In the recent midterms, voters across the country rejected ballot initiatives that would have imposed punishing restrictions on oil and natural gas producers. Washingtonians squashed a proposed carbon tax. Coloradans voted down a de facto ban on fracking throughout most of the state. And Arizonans rejected a proposition that would have mandated huge increases in renewable energy production. By defeating these ballot initiatives, voters sent a message to their political leaders. They don't want to choose between a clean planet and abundant, affordable energy. They want both. And thanks to recent advances in drilling technologies, they can get their

wish. Around the turn of the century, energy firms developed new technologies empowering them to tap into huge underground oil and natural gas deposits that were previously inaccessible. Fracking, horizontal drilling, and other innovative drilling techniques have enabled a breathtaking expansion of domestic energy production."

Energy Markets

WTI Crude Oil: ↑ $53.41
Natural Gas: ↑ $3.11
Gasoline: $2.26
Diesel: $2.92
Heating Oil: ↑ $191.75
Brent Crude Oil: ↑ $62.00
US Rig Count: ↓ 1084

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From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 10/1/2018 1:53:47 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: [SPAM-Sender] Boogie woogie woogie

View this email in your browser

In the Pipeline

MORNING ENERGY NEWS | 10.1.2018

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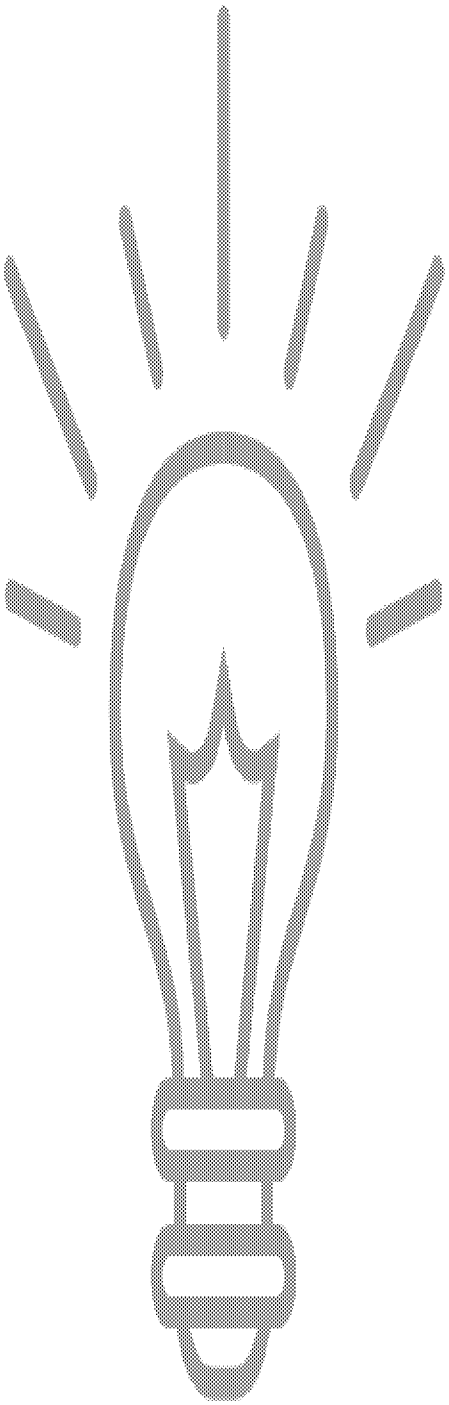
You gotta feel it (it's electric!)

Heartland (9/28/18) blog: "First implemented in 2009, the electric vehicle tax credit allows for consumers purchasing electric vehicles to claim a $7,500 federal tax break. Several electric car manufacturers, most notably Tesla, have used this credit to drive up sales...(A) several manufacturers are nearing the 200,000 cap, they are calling for elimination of this cap and extension of the tax credit. The bill, titled the Electric Cars Act of 2018, would extend the tax credit for 10 years and eliminate the manufacturer sales cap...The bill's primary goal is clear: It is designed to prop up Tesla and the rest of the electric vehicle industry using billions of taxpayer dollars."



"The federal government can't help but get wrapped up in the tech sector, placing ludicrously large bets on boondoggles that benefit few at the expense of many. Take, for example, electric vehicles and their associated tax credits."

– Ross Marchand, Taxpayers Protection Alliance

Behold the world's most expensive tweet.

New York Times (10/1/18) reports: "Elon Musk, under pressure from his lawyers and investors of Tesla, the company he co-founded, reached a deal with the Securities and Exchange Commission on Saturday to resolve securities fraud charges. The settlement will force Mr. Musk to step aside as chairman for three years and pay a $20 million fine. The S.E.C. announced the deal two days after it sued Mr. Musk in federal court for misleading investors over his post on Twitter last month that he had "funding secured" for a buyout of the electric-car company at $420 a share."

The Blue Wipe Out

Vox (9/28/18) column: "This November, for the second major election in a row, citizens of Washington will vote on a ballot initiative that would put a price on

carbon emissions (among many other things). The first such ballot initiative, in 2016, failed, part of a long series of failures of climate policy in the state. This year's effort hopes to ride the electoral blue wave and break Washington's climate losing streak. If it passes, Washington will take its place as a part of a growing West Coast climate vanguard, alongside California and Oregon, representing close to 20 percent of the US economy."

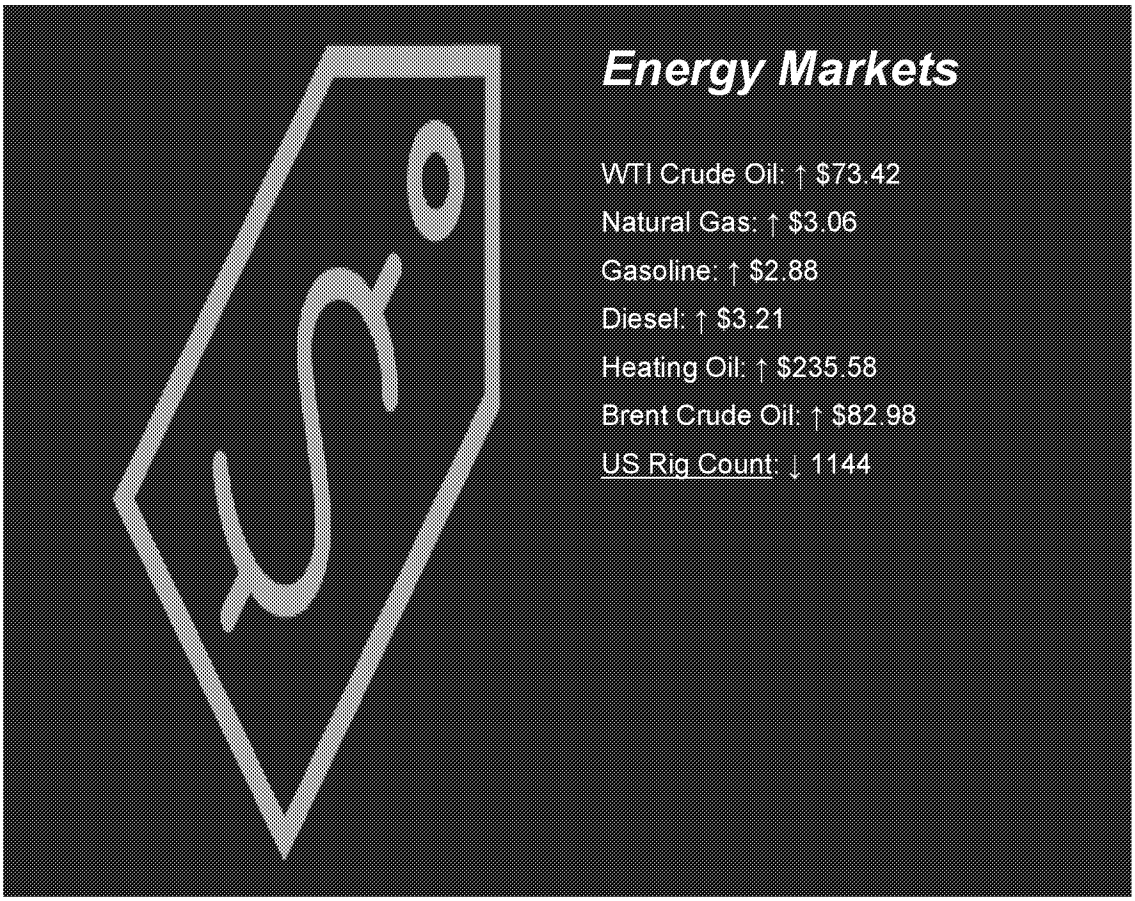
Hips don't lie; EPA does.

The Hill (9/29/18) reports: "A federal judge has upheld Endangered Species Act (ESA) protections for the Gunnison sage grouse, rejecting challenges from the states that host it. Judge Christine Arguello of the District Court of Colorado said that the Fish and Wildlife Service's 2014 decision, during the Obama administration, to list the bird as 'threatened' and protect 1.4 million acres of its habitat followed the relevant laws. 'The [EPA] thoughtfully progressed through the required analysis under the ESA, supporting its findings with scientific analyses and data,' she said. 'Affording it the highest deference, the court finds that the service's ultimate conclusion that the Gunnison sage-grouse is "threatened" under the ESA was supported by reason and not arbitrarily drawn, nor was it contrary to law.'"

"Everyone is just hoping this whole idea would just die."

Wall Street Journal (9/30/18) reports: "Saudi Arabia has put on hold a $200 billion plan with SoftBank Group Corp. 9984 -0.31% to build the world's biggest solar-power-generation project, Saudi government officials said, in a complication for another eye-catching transformation project in the kingdom...The solar project was meant to be part of the once-in-a-generation economic and societal transformation under way in Saudi Arabia...Saudi energy officials hadn't decided on the solar project's key details, such as the land that would be used; the structure of development or whether it would receive

subsidies from the state, said a Saudi energy official and adviser familiar with the matter. “Everyone is just hoping this whole idea would just die,” the Saudi energy official said."...Saudi Arabia currently has almost no solar power generation and produces its electricity by burning crude oil, diesel and gas."



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From: Maisano, Frank [frank.maisano@bracewell.com]
Sent: 10/8/2018 6:24:37 PM
To: Maisano, Frank [frank.maisano@bracewell.com]
Subject: Oct 8 PRG Energy Update: SEJ Review, E15 Presidential Visit

Friends,

Celebrating my "Italian-American" holiday today with light traffic and a big fresh helping of energy industry pasta carbonara...all while we get ready for the big Presidential visit to Iowa tomorrow. But first, let's revisit a great SEJ meeting late last week in Flint. It was great to see so many of you and share some good storylines and Washington gossip with you. And how about that Jeff Holmstead guy... Special thanks to him for flying out and joining several key panels on EPA reg issues. As you know, we at Bracewell and our many sponsors love this event and look forward to Colorado State hosting next year!!! I am already thinking of a special "Colorado theme" for our reception.

So, on to tomorrow... The President will travel to Iowa to make some sort of announcement aimed at pleasing ethanol supporters. Given his political challenges and supporters on each side of this issue, he continues to walk a fine line. In the meantime, 20 Senators urged him not to order EPA to expand sales of ethanol by allowing year-round sales of 15% ethanol fuel (E15). In a letter sent Thursday, the group urged "a collaborative and transparent process with robust engagement on any RFS reform process."

Our two most favorite events this week are on Wednesday: 1) the morning's Energy Policy Institute at the University of Chicago discussion on clean energy research and development investments at the Grand Hyatt. Our friends Rich Powell of ClearPath, Jim Connaughton, ACCF's Drew Bond and former DOE official Melanie Kenderdine are among the speakers. And, 2) a 9:30 a.m. CSIS event featuring an "Energy Perspectives" discussion with Equinor exec Eirik Wærness.

Following the weekend's Senate voting, the Senate remains in session through Friday to finish its work on budget issues. Tomorrow EPA hosts a hearing on its study of oil and gas extraction wastewater management, while on Wednesday Senate Environment looks at state management of wildlife issues. The Senate Energy looks at blackstart issues (the process for returning energy to the power grid after a system-wide blackout) on Thursday and then Friday, SAFE holds a lunchtime briefing on the Hill to discuss the importance of fuel economy standards and the steps the EPA and NHTSA can take to modernize the rules in a way that will save lives, reduce oil consumption and strengthen American energy security.

Finally, with baseball playoffs well underway and the iHeart Music Festival from Las Vegas hitting TV tonightday, we also saw two important climate stories from the international community. First, UN scientists said (again) said we have to act now on climate to limit catastrophic warming and Yale Economist William Nordhaus (a carbon tax advocate) shared the Nobel Prize for Economics. While I won't comment international climate sentiment, I will say we have heard this from UN scientists before when they weigh into policy issues, but even they highlighted that the hollow promises of the Paris Agreement are meaningless. As for Nordhaus, he and his NYU colleague Paul Romer – who shared the prize for his separate work – are more focused on how to advance innovative technology to drive change, which of course is the most viable solution to addressing climate issues. Call with questions. Best,

Frank Maisano
(202) 828-5864
c. (202) 997-5932

FRANKLY SPOKEN

"Congress is right to focus on this important issue. Designing homes and buildings in hazard-prone areas with the expectation that damage will occur can make communities safer and reduce the costly repairs that follow extreme weather events. In areas prone to natural disasters, more spending on mitigation is absolutely justified and our tools

help local officials and community leaders ways to identify how much extra spending is recommended, and what the payback will be."

MIT Researcher Jeremy Gregory on Congressional passage of legislation to reform disaster assistance that included disaster reform legislation makes the proactive investments America needs to limit the damage these extreme weather events can have and speed our ability to recover and rebuild.

ON THE POD

Experts Tackle New Trade Deal With Mexico, Canada – On this week's episode of the Bracewell *Lobby Shop* podcast (live on Apple Podcasts, SoundCloud, Stitcher, and Google Play Music) trade expert Josh Zive dives into the newly released United States-Mexico-Canada Agreement (USMCA), or NAFTA 2.0.

FUN OPINIONS

IEA Says Renewable to Grow Dramatically – The International Energy Agency's annual report on renewable energy says global renewable electric capacity will grow by more than 1,000 gigawatts from 2018-23 - higher than the 920 GW forecast for 2017-22. The analysis this year contains an in-depth look at bioenergy, the world's largest source of renewable energy, highlighting the untapped potential of modern bioenergy and other renewable sources for greening the industry and transport sectors. Under an accelerated case, the report also highlights policy and market improvements that can unlock further growth of renewable energy in electricity and transport biofuels. Solar energy and power from wind are expected to make up most of the renewable capacity expansion, but "bioenergy is the overlooked giant" for renewables, said IEA Executive Director Fatih Birol, because its share of global renewables consumption stands at about 50%.

IN THE NEWS

Letter: 20 Senators Urge Opposition to E15 – In a new letter on the eve of tomorrow's Presidential visit to Iowa where the President is expected to roll out a plan to allow E15 use year-round, 20 Senators urged the President not to order EPA to expand sales of ethanol by allowing year-round sales of 15 percent ethanol fuel. In a letter sent Thursday, the group urged "a collaborative and transparent process with robust engagement on any RFS reform process." Signers include Democratic Sens. Cardin, Udall, Menendez, Manchin, as well as Republican Sens. Inhofe, Cornyn, Barrasso, Capito, Hatch, Enzi, Wicker, Toomey, Daines, Collins, Isakson, Boozman, Cassidy and Kennedy.

New Congressional Disaster Reforms Grounded in MIT Research – Last Week, Congress approved a five-year reauthorization of FAA which includes the Disaster Recovery Reform Act (DRRA). The legislation makes the proactive investments America needs to limit the damage these extreme weather events can have and speed our ability to recover and rebuild. Now, it goes to President Donald Trump for final approval. Many of the reforms in the legislation – which seeks to address the rising costs of disasters and reform the federal disaster program to ensure communities are better prepared in the future – underscores the research being undertaken by experts at MIT's Concrete Sustainability Hub on disaster resilience, hazard mitigation and recovery. Already, long-term cost of repairs in hazard-prone communities are generating increased financial burdens for both building owners and communities. MIT research is showing that factoring resilience into building design can help reduce lifetime repair and maintenance costs in hazard-prone areas and allow communities to recover more quickly from a disaster. Jeremy Gregory, executive director of MIT's Concrete Sustainability Hub (CSHub), is leading the charge on this part of the extreme weather calculus. Gregory and his researchers are pushing the frontier of academic research into building materials, with implications for policymakers, building designers, communities, and the vulnerable residents of hazard-prone areas.

Coal Ash Update in NC – The North Carolina Department of Environmental Quality says flooding from Hurricane Florence that submerged a Duke Energy coal ash storage area in Wilmington did not contaminate the Cape Fear River. "Test results show all metals below state water quality standards with the exception of dissolved copper," DEQ said in a statement. The laboratory results confirm initial comments from Duke Officials and undercut claims from activist environmental groups that have been lobbying media on coal ash worries even prior to Hurricane Florence

making landfall. Our friend John Murawski at the *Raleigh N&O* reports that DEQ took water samples at the breached Lake Sutton dam Sept. 22. On Sept. 25, 26 and 27, the agency took water samples about one mile downriver as well as at the dam that was overflowing with flood waters near the coal ash. DEQ took water samples in the same general location of the dam breach where the environmental groups had collected water on Sept 21. Lab results tend to have the highest readings in water samples taken at or near a flooded coal ash pond. Water sampled downstream at high flood stage is usually very diluted and produces low readings of heavy metals. Additionally, some contaminants in flood waters come from other sources, such as chemical sites, industrial sites and elsewhere. The agency's lab analysis shows that arsenic levels were so low as to be undetectable, as were the levels for selenium, boron and other heavy metals associated with coal ash. Only copper exceeded state water standards downstream of the coal ash, but state scientists also got the same slightly elevated readings for copper upstream of the coal ash, indicating the copper came from storm runoff, not from the coal ash. This is the second time that DEQ lab results have validated tests conducted by Charlotte-based Duke Energy and contradicted water sampling conducted by environmental groups. The agency has also said that Duke's coal ash impoundments at the H.F. Lee complex in Goldsboro did not contaminate the Neuse River, while environmental groups said they found arsenic levels there that were 18 times higher than state water standards.

WV Enviro Writer Wins Genius Grant – Our friend and fellow SEJ reporter Ken Ward Jr. has won a $625,000 MacArthur Foundation "genius grant." Ward, from Charleston, WV has written extensively about coal mining industry for years.

ACEEE Report Says Mass Top State for Efficiency – A new scorecard from the American Council for an Energy-Efficient Economy says Massachusetts remains the most energy-efficient state, with California close behind and New Jersey showing the most improvement. The scorecard offers mostly good news about energy efficiency — the nation's third-largest electricity resource. In response to federal efforts to freeze US vehicle and appliance standards, quite a few states worked to retain their own standards and to promote electric vehicles as well as zero-energy buildings. While some, like Iowa and Connecticut, saw legislative attacks within their states, others — including Virginia, New York, New Jersey, Colorado, and Arkansas — unveiled plans to boost investments in efficiency and clean energy, often driven by concerns about climate change.

ON THE SCHEDULE THIS WEEK

EPA to Host Meeting on Oil, Gas Wastewater Study – The EPA will host a public meeting tomorrow on an oil and gas wastewater study.

Brookings Forum Will Look at China – Today at 10:00 a.m., the Brookings John L. Thornton China Center will convene a panel of experts to discuss China's environmental agenda at the international, national, and subnational levels. Experts will explore the relationship between growth and sustainability within China. They will also examine areas where China and other nations, including the United States, are cooperating to address climate issues through NGOs, think tanks, and regional governments, and where there might be space for expanded partnership. In addition, panelists will consider China's responsibilities for driving global climate action in an era of rising temperatures.

Potential Trump Visit to Iowa – President Donald Trump is expected to visit Council Bluffs, Iowa, today to direct EPA to expand sales of ethanol.

JHU Book Looks at Energy Poverty Trap –Johns Hopkins University hosts the book launch tomorrow at 5:00 p.m. of Professor Johannes Urpelainen new book on energy poverty. The book is the first comprehensive political science account of energy poverty and explores why governments have or have not been able to lead in providing modern energy to their least advantaged citizens.

ClearPath, EPIC, ACCF host Forum on R&D Investments – The Energy Policy Institute at the University of Chicago (EPIC), in partnership with ClearPath and the American Council for Capital Formation, will hosting discussions on Wednesday at 8:30 a.m. in the Grand Hyatt looking at lessons gleaned from research and practical experiences. The conversations will provide insight into how to translate research findings into actionable policy and industry approaches that can drive clean energy innovation.

CSIS to Hear Equinor Energy Perspectives – On Wednesday at 9:30 a.m., the CSIS Energy and National Security Program will host Eirik Wærness (Equinor) to present Equinor's Energy Perspectives 2018. Energy Perspectives summarizes different narratives about the future of global energy demand and energy mix within the parameters of various scenarios. These scenarios are based on different assumptions about regional and global economic growth, conflict levels, technological development, and energy and climate policies. The 2018 edition adjusts for last year's climate and energy developments, including technological advancements throughout the energy sector. Energy Perspectives is based on models and frameworks that Equinor uses to create long-term analyses of energy markets. The report is intended to foster greater understanding of uncertainty in the long term and what factors may affect this uncertainty.

Clean Energy Forum Set for Boston – Horizon 18, the Global Solutions Platform for the Clean Economy, is set for Wednesday and Thursday in Boston at the Hynes Center. Horizon18 offers two days of high-level discussions among the key stakeholders from both public and private sectors. Our friend Greg Wetstone, head of ACORE, is among the speakers.

Senate Looks at State Wildlife Management – The Senate Environment Committee will hold a hearing on Wednesday at 10:00 a.m. looking at successful state conservation, recovery, and management of wildlife. The hearing will feature state wildlife officials and look at recoveries from Yellowstone's Grizzly Bear to the Chesapeake's Delmarva Fox Squirrel.

CSIS to Host IEA – On Thursday, the CSIS Energy & National Security Program will David Turk of the International Energy Agency for a presentation and discussion on the IEA's upcoming report, *The Future of Petrochemicals: Towards a more Sustainable Supply of Plastics and Fertilizers.* This new report explores the future role of the petrochemical sector within overall oil demand and the global energy system.

Heritage Forum to Look at Nuclear Partnerships – The Heritage Foundation holds a forum on Thursday at 9:00 a.m. to look at the successes of past nuclear partnerships and the need to continue and expand upon these relationships.

Forum to Look at Nuclear Power in Space – The Space Foundation and Department of Energy host a talk on Wednesday at 11:30 a.m. in 2043/44 Rayburn looking at nuclear power in space. Among the speakers will be DOE's Tracey Bishop.

Mexico Free Trade Negotiator Featured at Wilson Center – On Wednesday at 6:00 p.m., the Wilson Center's Mexico Institute hosts a forum on the incoming Mexican president and North American free trade. Jesús Seade, Mexican President-elect Andrés Manuel López Obrador's chief NAFTA negotiator will be featured in a conversation on the outlook for trade in North America under Mexico's new administration.

WAPA Rally Set for VA Countryside – The Washington Automotive Press Association is hosting its 2018 Rally in the Virginia countryside on Thursday at Summit Point Motorsports Park. As in the past, attendees will be able to experience a behind-the-wheel test of a large number of new vehicles from many automotive manufacturers. Representatives from the manufacturers will be on hand, so this is a great opportunity to network with them and other members.

SAFE Talks Fuel Economy – Securing America's Future Energy (SAFE) for a lunchtime briefing Friday on the Hill to discuss the importance of fuel economy standards and the steps the EPA and NHTSA can take to modernize the rules in a way that will save lives, reduce oil consumption, and strengthen American energy security. SAFE will also emphasize the importance of factoring in the military cost of protecting the global oil supply lines when developing these new rules. Recent analysis by SAFE conservatively estimates the U.S. spends at least $81 billion every year to protect the worldwide free flow of oil. This cost should be included when modeling the cost-benefit analysis of the new rules. Speakers include SAFE CEO Robbie Diamond, Michael Johnson of Parsons Infrastructure and Gen. James Conway (Ret.).

Cal Gov Official to Review Climate Summit – On Friday, the Environmental and Energy Study Institute (EESI) and the Business Council for Sustainable Energy (BCSE) hold a briefing on some of the outcomes of last month's Global Climate Action Summit. The briefing will showcase some of the carbon reduction actions being taken by a wide range of sub-national actors, including states, regions, cities, and companies. The overview of the Global Climate Action Summit will be provided by Dan Carol, Senior Advisor for Infrastructure and Energy, DC Office of CA Governor Jerry Brown. This will

be followed by a discussion panel of sub-national stakeholders from city and state governments, as well as business leaders.

IN THE FUTURE

Northam to Headline Offshore AWEA Wind Conference – AWEA will host its annual Offshore WINDPOWER Conference on October 16th and 17th in Washington DC. Virginia Governor Ralph Northam will speak at this year's Conference, along with Norwegian Energy Minister Kjell Børge Freiberg. Interior's James Bennett and our friends Stephanie McClellan of UDel's Wind Initiative and Bloomberg NEF's Ethan Zindler.

CSIS Looks at Indo-Pacific Clean Energy Transition – The CSIS Energy & National Security program will Host a conversation with Sen. Steve Daines on October 18th

Forum to Look at Wood – In recognition of National Forest Products Week, the Environmental and Energy Study Institute (EESI) hosts a forum on October 23rd on Capitol Hill that discusses an innovative class of structural wood building materials. This briefing will bring together experts to tell the emerging story of the U.S. mass timber industry and how to capitalize on its potential. Speakers will include Sen Angus King.

Shale Insight Set For Pittsburgh – Shale Insight 2018 is set for Pittsburgh on October 23-25. The Marcellus Shale Coalition (MSC) hosts the event along with the Ohio and West Virginia Oil & Natgas Assns. SHALE INSIGHT™ offers insightful pre-conference workshops, technical and public affairs sessions, national keynote addresses, and high-powered networking sessions will provide attendees, sponsors, and exhibitor's unprecedented access to the industry's most influential leaders and innovators. You can see the agenda HERE.

ELECTION DAY – November 6th

FRANK MAISANO
Senior Principal
Ext. 5864
Policy Resolution Group

Message

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Sent: 10/25/2018 1:46:04 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Collusion!

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In the Pipeline

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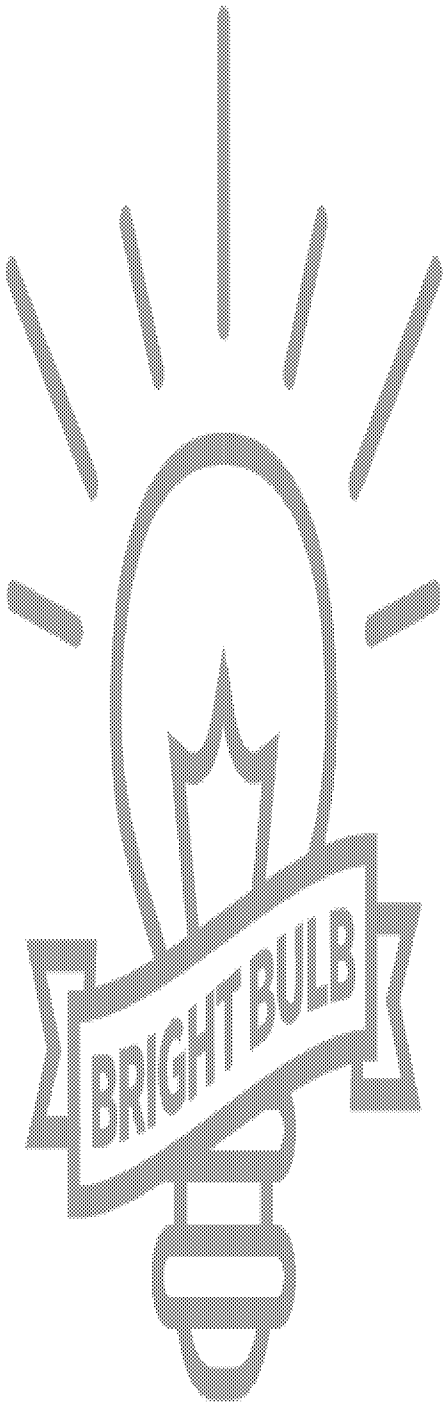
The EU has spent nearly $500 million on technology to fight climate change—with little to show for it!

Quartz (10/23/18) reports: "The auditors' report investigated two EU programs: the European Energy Programme for Recovery (EEPR), with a budget of €4 billion, and the New Entrants' Reserve 300 (NER300), with a budget of €2.1 billion. Both were launched in 2009 after the financial crisis to aid economic recovery and move the needle on climate action. Their goals were specifically to support the deployment of carbon capture and storage (CCS) and new types of renewable energy. (This article will focus on CCS spending. The report has details about the other investments.) To date, the EEPR has spent €424 million on six CCS projects in Germany, Poland, Italy, the Netherlands, the UK, and Spain. 'Four out of these six co-funded projects had ended after the grant agreement was terminated, and one project ended without being completed. The only completed project did not represent a commercial size CCS

demonstration project,' the report concludes. Though some CCS projects were awarded NER300 grants, none were completed and thus the grant money was never spent. 'We conclude that neither of the programmes succeeded to deploy CCS in the EU,' the auditors write. The reasons for failure are tied to uncertain regulations and tight project requirements. In other words, the auditors conclude, the EU underestimated the hurdles in commercializing a nascent climate technology."



"The explicit energy taxes advocated in this IPCC analysis are so large, and so impossible economically and politically, as to be preposterous. The relationship between reductions in GHG emissions and the various socioeconomic sustainable development goals are implausible, to say the least, and represent an obvious attempt to facilitate coalition building among the proponents of climate policies; the deeply dubious outlook for the green climate fund is only one source of that political dynamic. This latest IPCC "analytic" work can be ignored safely."

–Benjamin Zycher, American Enterprise Institute

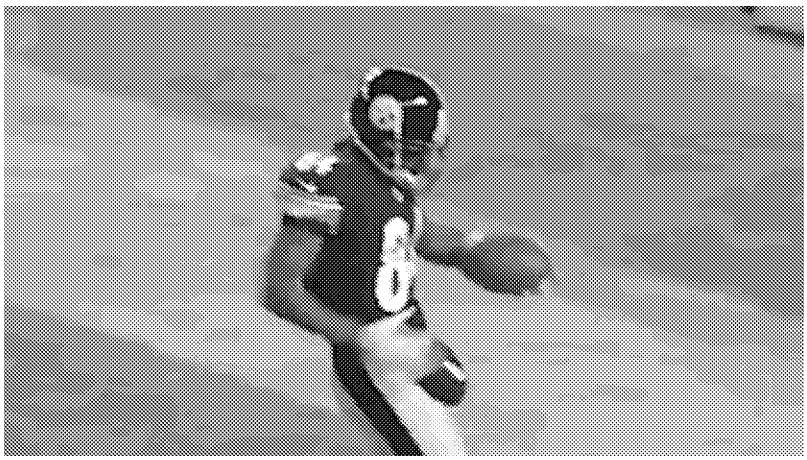
New York's climate lawsuit against Exxon isn't what you think it is.

The Daily Caller (10/24/18) reports: "What started into an investigation into Exxon's alleged attempts to 'cover up' or downplay global warming has morphed into a lawsuit over the minutia of the company's internal versus external valuations of 'proxy' prices on carbon dioxide emissions from potential future regulations. The premise of the state's four-year investigation into Exxon stemmed from allegations it misled the public and investors by downplaying global warming risks through funding skeptics and opponents of global warming regulations. However, that's not what Exxon is being sued for."

Wisdom from the Steel City.

The Observer-Reporter (10/24/18) letter to the editor: "Throughout my 18-year

career as a Pittsburgh firefighter, I have learned some undeniable truths. First, very few places get hit as hard as Western Pennsylvania does and gets back up. It wasn't that long ago that our region was facing dire economic news. Thanks to a variety of factors, including a thriving natural gas industry, decades of higher-than-average unemployment rates have given way to a robust economy and dramatically better employment numbers. What would have sounded like fiction 15 years ago is now reality. With major projects like the Shell cracker plant, Western Pennsylvania is now faced with how to deal with labor shortages – a much better problem to have."



This week in climate corruption.

The Daily Caller (10/24/18) reports: "Attorneys associated with various attorneys general offices across the country met at a secret fundraiser in 2016 at Harvard University to discuss how to engage in climate lawsuits, according to a series of reports. Handouts touting the fundraiser did not include any specifics, a Competitive Enterprise Institute (CEI) report from August notes. But one presenter described the event in an email as a 'secret meeting' designed to discuss litigation holding oil companies responsible for climate change. The Vermont Office of Attorney General attempted to sue to keep aspects of the fundraiser secret, the report notes. Courts eventually compelled the AG to release the lineup for the fundraiser that focused on pursuing opponents of the climate political agenda. Union of Concerned Scientists (UCS) co-hosted the event, which took place at the Harvard University School of Law. CEI obtained emails this year allegedly showing that UCS was secretly involved with activist AGs pursuing opponents of the climate agenda since before July 2015."

The Corn Mafia strikes again!

RealClearEnergy (10/23/18) op-ed: "When Congress approved the Renewable Fuel Standard in 2007, it was presumed that corn ethanol would be supplanted by cellulosic ethanol, made primarily from switchgrass and wood chips. But refineries producing cellulosic ethanol never got off the ground, despite government assistance. Among the negative consequences of the increase in production of corn ethanol have been conflicts between land for fuels and land

for food, water scarcity, loss of biodiversity, and nitrogen pollution through the excessive use of fertilizers. And if ever there was a question about the impact of ethanol, it was dispelled by evidence that its climate benefits are nil.
A study by the International Institute for Sustainable Development shows that replacing gasoline with ethanol has little or no effect on carbon emissions. Instead of pretending that ethanol is necessary, Congress should incorporate some common sense into energy policy by repealing the Renewable Fuel Standard. Clearly, the longer the need for a change in policy is ignored, the bigger will be the consequences for consumers."

Energy Markets

WTI Crude Oil: ↑ $67.05

Natural Gas: ↑ $3.20

Gasoline: ↓ $2.84

Diesel: ↓ $3.29

Heating Oil: ↑ $226.13

Brent Crude Oil: ↑ $76.62

US Rig Count: ↑ 1158

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Sent: 9/24/2018 8:04:46 PM
To: Maisano, Frank [frank.maisano@bracewell.com]
Subject: Sep 24 PRG Energy Update: Fuel Econ Hearings, Clean Energy Week

Friends,

Wow… a lot happening on many fronts… Perhaps today, given the Lions actually beat the Patriots (how does that happen?) and Tiger Woods has finally returned to the top by winning Southern-sponsored PGA Tour Championship (it finally happened), we should just get after it.

Speaking of Southern, its Vogtle nuclear project faces an important date today regarding its future. DOE weighed in Friday urging partners to keep the project going. Also today, NHTSA and EPA starts its three public listening sessions on the revisions to the fuels economy standard. The sessions begin today in Fresno, tomorrow in Dearborn MI, and Wednesday in Pittsburgh. Our friends at SAFE, will have **General Conaway** in Michigan tomorrow, who will say the national CAFE program may need to adjust to market realities, but it requires adjustments rather than a wholesale freeze. "We stand on the cusp of a technology revolution that offers the chance to end oil dependence in a way that will no longer constrain our foreign and military policy or threaten our economic independence and growth." Finally, it is Climate Week up in NYC surrounding the UN Meetings, so expect the usual craziness.

This week is the 2nd annual National Clean Energy Week, spearheaded by Citizens for Responsible Energy Solutions and co-sponsored by ClearPath and others. The week-long spotlight on clean and reliable energy technologies includes a number of official and side events, including a major Wednesday policymakers symposium featuring EPA's **Andy Wheeler**, Interior Sect. **Zinke**, FERC Commissioner **Neil Chatterjee**, DOE Under Secretary for Energy **Mark Menezes**, Senate Energy Chair **Lisa Murkowski**, Rep. **Tom Reed** and ClearPath Executive Director **Rich Powell**. The next evening, Sept. 27, CRES will host a ceremony on Capitol Hill honoring its champions, including **Murkowski, Reed, Sen. Tim Scott** (R-S.C.) and **Rep. Elise Stefanik** (R-N.Y.).

Speaking of the Press Club, Freedom Partners and Americans for Prosperity, in partnership with a coalition of advocacy groups (including our Bracewell trade coalition) representing American job creators, will host an event tomorrow at 10:00 a.m. in the Ballroom, featuring small business owners, manufacturers and farmers who have all been harmed by tariffs and protectionist trade policies. Also, **Steve Forbes** and **Rep. Roger Marshall** will share their views on the future of U.S. trade policy.

On the Hill this week, both the House and Senate are in session pushing final budget measures, including funding for environment and interior. Tomorrow, Senate Energy looks at quantum science with DOE science advisor Paul Dabbar. Wednesday, Senate Energy looks at man-made trash in oceans while Homeland Security tackles PFAS. Then Thursday, House Science looks at nuclear and House Energy deals with DOE modernization with relation to cybersecurity and disaster response, one of a number of looks at cybersecurity during the week that also include a two-day forum at the Roosevelt Security Council featuring Southern CEO **Tom Fanning** starting tomorrow and one Wednesday at the Newseum featuring our friends **Don Santa** of INGAA and **Dave McCurdy** of AGA. Also on Thursday, ClearPath's nuclear guru **Spencer Nelson** participates in a discussion hosted by R Street on bringing innovation and reform to the nuclear industry.

Finally, just a reminder, last week I mentioned that **Ann Navaro**, former high-level Interior official, is joining us at Bracewell. Just reminding you that I want to introduce her around to many of you covering the issues starting in the next few weeks. Several of you have already connected with me, but if you have not, please let me know so I can get you connected.

Call with questions. Best,

Frank Maisano
(202) 828-5864
c. (202) 997-5932

FRANKLY SPOKEN

"If NetPower's technology keeps working, this dream (of zero emissions) could become reality. Implementing such a technology could make a significant dent in global carbon emissions, given that the EIA expects fossil fuels to account for more than three-quarters of world energy consumption through 2040."

Sarah E. Hunt, the co-founder and CEO of Joseph Rainey Center for Public Policy, in an expert voices piece in Axios.

ON THE POD

California Gas Tax Challenge Discussed on Platts – Platts Capital Crude looks into whether California voters may soon repeal a 12 cents/gal gasoline tax increase, a ballot initiative which could prevent state lawmakers from ever again approving a gas tax jump without voter approval. Sam Ori, executive director at the Energy Policy Institute at the University of Chicago, discusses the potential impact on demand, state energy policy and future growth of electric vehicles.

FUN OPINIONS

MIT Expert Highlights Rough Road Impacts on Fuel Econ, GHGs – MIT Concrete Sustainability Hub Researcher Jeremy Gregory had an op-ed in the *USA Today* last week that argues few people are aware that the quality of our roads impacts the amount of fuel we use. Gregory says Pavement Vehicle Interaction (PVI) impacts everything from greenhouse gas emissions to our annual budget for gasoline. All vehicles, whether gasoline, diesel or electric, use energy to move — but some of that energy is being wasted. On roads with poor surface conditions or subpar structural properties, vehicles consume more fuel than what's needed to move. Researchers are now focusing in on that excess fuel consumption by taking a hard look at PVI. Actions that improve road design and conditions not only improve vehicle fuel consumption and emissions, but it is even more important for state officials who should want to improve transportation maintenance, planning and budgeting so taxpayers can get the most effective bang for their transportation buck.

IN THE NEWS

Sutton Coal Ash Update – You may have seen varying reports about the coal ash issues from Hurricane Florence. Unfortunately, while this remains a serious issue, many activists who have fought Duke on coal ash, are aggressively touting the Florence impacts for their own benefit. Here are some facts from Duke: Initial water tests from the Sutton Plant in Wilmington confirm that discharges from the cooling lake to the Cape Fear River are not harming water quality downstream. As previously reported, coal ash basins remain stable. Water samples captured on Friday upstream and downstream of the Sutton plant site show little to no impact to river water quality. All results are well within the rigorous state water quality standards in place to protect the environment. There is little difference in river water quality when comparing samples taken upstream above the facility and downstream below the facility. Complete test results and can be found here. As previously announced, cenospheres have moved into the Cape Fear River. The company has deployed booms to try to capture any other material before it leaves the lake. Cenospheres are lightweight, hollow beads comprised of alumina and silica that are a byproduct of coal combustion. Importantly, cenospheres have a different chemical makeup than fly ash, bottom ash, boiler slag and other materials, which are the focus of regulation and concern.

Initial repair plans – Cape Fear River levels near the site are beginning to recede slightly, but Duke officials expect the river level to be high for days. The company continues to post photos and video to illustrate the situation at the site. As soon as the river stops flowing over the north end of the cooling lake dam and work conditions are safe, teams will begin repairs to stop water exiting the south side of the lake. The objective is to retain as much water in the lake as possible to

support future plant operations and recreation. Sutton Lake is a 1,100-acre man-made reservoir constructed in 1972 to supply cooling water to the Sutton Power Plant. The cooling lake does not store coal ash.

DOE issues Final Situational Hurricane Response Report – DOE emergency response efforts have been monitoring Hurricane Florence to deliver situational awareness of energy sector impacts. DOE responders in the field will facilitate subject matter expertise and assist with expedited waivers and special permits that aid industry restoration efforts. Since the start of the storm, DOE issued situation reports on the impacts to the energy sector and industry's restoration activities. Situation Report #17, issued on Saturday is the final regular Situation Report issued by DOE about impacts from Hurricane Florence. DOE/ESF-12 continues to provide support to FEMA and the States as needed. If there are any significant issues, DOE will provide updates as appropriate.

Vogtle Facing Key Date – Speaking of DOE, on Friday it urged owners of the Vogtle nuclear plant under construction not to cancel the project ahead of today's vote that could determine the plant future. Minority owners of the Vogtle nuclear project in Georgia are weighing whether to pull out of an expansion of the plant. DOE warned that would prompt the repayment of billions in federal loans and strike a blow to the fragile U.S. nuclear industry. In letters released late Friday, DOE said it understands that the choice to continue Vogtle is a "commercial decision," but warned that it would have a "profound impact on the U.S. nuclear industry" and leave a "reputational mark of American industry to complete important and complex infrastructure projects."

Nav Gen Deal Falls Through – The Navajo Generating Station (NGS), a coal plant on the Arizona-Utah border will cease operations in a year's time, after New York-based Avenue Capital and Chicago-based Middle River Power withdrew interest in the plant. Middle River Power dropped its bid saying "recent developments" in Arizona and California would have made it difficult to find a buyer for the plant's output.

China Pushing Back on Energy Tariffs – China said it will impose a 10% tariff on U.S. liquefied natural gas starting Monday as part of its retaliatory penalties on a further $60 billion of U.S. imports, but crude oil will not be tariffed. Amid the escalating trade war, U.S. and Chinese officials said at an oil and gas forum in Houston that energy trade between the two countries will remain strong.

ON THE SCHEDULE THIS WEEK

CAFE Public Hearing Set for CA, MI, PA – NHTSA and EPA will hold three public hearings on the revisions to the fuels economy standard. The hearing will occur on today in Fresno, tomorrow in Dearborn MI, and Wednesday in Pittsburgh. See General Conaway's comments for Michigan tomorrow, where he will say the national CAFE program may need to adjust to market realities, but it requires adjustments rather than a wholesale freeze. "

Climate Week NYC – Surrounding the UN Meetings this week, activists are once again holding ClimateWeekNYC. You can see details here.

Offshore Wind Exec Summit Set for Houston – The Offshore Wind Executive Summit will be held today and tomorrow in Houston at the Westin Galleria and will focus on the current market including project development, important policy issues and the complicated supply chain. Our Bracewell colleague George Felcyn is presenting as well as NOIA's Randy Luthi, AWEA's Tom Kiernan, BOEM's James Bennett, Equinor's Mike Olsen, former BOEM head Tommy Beaudreau and UDel's Offshore Wind Initiative Stephanie McClellan.

Texas Energy Summit Set – The Texas Energy Summit, hosted by the Energy Systems Laboratory at Texas A&M University Systems, Texas A&M Engineering Experiment Station will be held at the Hyatt Regency Houston/Galleria today through Wednesday. The Texas Energy Summit will continue to tackle all of the topics currently facing the energy industry.

State Energy Officials Meet in Detroit – The National Assn of State Energy Officials hold their annual meeting in Detroit today through Wednesday at the Westin in the Renaissance Center. NASEO's event convenes state, local, and private sector leaders of breakthrough, innovative, and effective energy programs, policies, and projects for a series of

discussions designed to foster peer learning and exchange among participants. The event will feature interactive sessions and discussions on transportation electrification, building-grid integration, and financing for energy innovation and infrastructure modernization. There is a long list of presenters here.

Energy Economists Look at Evolving Energy Realities – The 36th USAEE/IAEE North American Energy Conference will be hold today through Thursday in Crystal City. The event provides a forum for informed and collegial discussion of how the emerging realities will impact all energy stakeholders. The conference will highlight contemporary energy themes at the intersection of economics, public policy, and politics, including those affecting energy infrastructure, environmental regulation, markets vs. government intervention, and international energy trade. Participation from industry, government, non-profit, and academic energy economists ensures robust, insightful discussion.

SoCo's Fanning Headline Forum to Look at Resilient Energy Future – The Roosevelt Strategic Council will hold its 2018 Microgrid and Resiliency Summit tomorrow and Wednesday, focused on building a resilient, efficient and sustainable energy future. The 2018 Summit is a senior level educational forum. It will focus on the technical capabilities and innovations that are allowing for advanced microgrid projects and increased penetration of renewables and DERS into the grid. Equally, the Summit will also serve as a conduit for developing the strategic business models and use cases while discussing the current regulatory and market landscape. Speakers include Southern CEO Tom Fanning, DOE's Bruce Walker and Ameren's Joe Power, among many others

Forum to Look at Building Policies – Tomorrow morning at the US Green Buildings Council, DOE, the Environment, New Buildings Institute and several partners are hosting the interactive session, which aims to stimulate collaboration, highlight leading local buildings and policies, and foster knowledge sharing regarding net-zero energy practice and policy.

Forum to Look at ESA – Resources for the Future hosts a forum tomorrow at 9:00 a.m. looking at the future of the Endangered Species Act. THE event will ask if an economic and environmental consensus is possible, and explore strategies for navigating the competing and complementing goals of environmentalists, conservationists, scientists, landowners, ranchers, and others. Our friend Mike Doyle of E&E News moderates the expert panel.

Senate Energy Look at Quantum Science – The Senate Energy Committee holds a hearing tomorrow looking at DOE's Efforts in the Field of Quantum Information Science. Witnesses will include DOE's Paul Dabbar, Argonne's Supratik Guha, Lawrence Berkeley National Laboratory Irfan Siddiqi and Microsoft's Todd Holmdahl.

AEE Webinar to Look at Blockchain – Advanced Energy Economy will hold a webinar tomorrow at 11:00 a.m. featuring expert panelists will discuss blockchain in wholesale market, distribution system, and behind-the-meter applications. Participants will gain a basic understanding of this distributed digital ledger technology and its potential uses in advanced energy, including examples from current pilot projects. Potential policy and regulatory issues that need to be addressed as blockchain is introduced in energy markets will also be covered.

Baltic Energy Forum Set – The Jamestown Foundation will hold a conference on energy security in the wider Baltic region tomorrow at the University Club. The conference will address the challenge to European security posed by Russia's Nord Stream Two natural gas pipeline project as well as discuss Northern Gate, an alternative energy transit corridor championed by Poland that will open up the region to Norwegian gas supplies and U.S. and international LNG shipments, blunting Gazprom's market monopoly position.

MIT Expert to Talk CCS – The US Energy Assn will hold a forum on carbon capture tomorrow at 2:00 p.m. featuring MIT Senior Research Engineer Howard Herzog. Herzog will give an overview of the current state of technology and policy related to Carbon Dioxide Capture and Storage (CCS) and cover seven aspects of CCS: (1) the role of CCS in addressing the climate change challenge, (2) a summary of large CCS projects in operation, (3) the current status and future directions for capture technology, (4) the current status and future directions for storage technology, (5) how to view negative emissions, (6) the policies and politics around CCS, and (7) what the future may hold.

Forum to Discuss Global Nuclear Issues – AE2C and the Johns Hopkins School of Advanced International Studies (SAIS) host a forum tomorrow at 4:00 p.m. looking at the global nuclear energy industry. The nuclear energy outlook in the U.S. seems uncertain as the nuclear industry faces fierce competition from natural gas and renewable energies, cost overruns in construction, and burdensome regulations. What are the challenges facing the nuclear energy sector in technological competitiveness, operational safety, and national security? AE2C will bring together a group of experts to discuss these pressing issues to help illuminate the potential future of nuclear power development around the world. Idaho Nat Lab GAIN Director Rita Baranwal, Exelon's George Gellrich and NRC's Ho Nieh are among the speakers.

Forum to Discuss AVs – The V2X & Spectrum Policy Roundtable, hosted by CarTalkDC and OmniAir Consortium, will hold a forum tomorrow evening regarding critical policy developments impacting connected and automated vehicles. The discussion will cover topics including: FCC spectrum sharing proceedings for DSRC, future spectrum needs for 5G, and practical examples of V2X deployments by states, cities, and adoption by automotive OEMs. SAFE's Greg Rogers moderates.

Clean Energy Week Forum Set – The 2018 National Clean Energy Week Policy Makers Symposium will be held on Wednesday at the National Press Club Ballroom. Speakers include EPA Acting Administrator Andrew Wheeler, Secretary of the Interior Ryan Zinke, FERC Commissioner Neil Chatterjee, Sen. Martin Heinrich, Daines and Murkowski and many more.

Forum to Look at Energy Cybersecurity – RealClearPolitics will hold a forum on energy cybersecurity Wednesday at 8:00 a.m. at the Newseum. The keynote speaker is Rep. Henry Cuellar of Texas and INGAA's Don Santa and AGA's Dave McCurdy will speak.

Forum to Look at Transportation – The Alliance to Save Energy's 50x50 Commission will hold an event Wednesday at 8:30 a.m. in 2255 Rayburn to roll out a new alliance that will unveil its full suite of policy recommendations on Capitol Hill to encourage policymakers to better prepare for the coming transformation. The Commission is a group of business, government, and civil society leaders that has been working to develop a pathway to capitalize on the opportunities of a rapidly changing industry by setting an ambitious goal of cutting the U.S. transportation sector's energy use by 50% by 2050 while meeting future mobility needs. The Commission will unveil. Keynote speakers will include Rep. Debbie Dingell (D-MI) and Pittsburgh Mayor William Peduto. The event looks at the key shifts in the industry, why their organization is participating in the Commission, and the importance of cohesive policies in securing the Commission's vision of the transportation future.

CSIS Looks at Indo-Pacific Clean Energy Transition – The CSIS Energy & National Security and Southeast Asia programs will host a forum on Wednesday at 9:00 a.m. looking at the State of the Indo-Pacific clean energy transition. The Forum will focus on grid regionalization and clean energy financing in Southeast Asia. The first discussion will explore lessons learned from other grid regionalization efforts, how interconnection between countries might affect the integration of renewable energy, and the financial, technical, and policy considerations that go into successful regional grid interconnection.

Border Energy Forum Set for San Antonio – The North American Development Bank (NADB) will host the XXIII Border Energy Forum in San Antonio on Wednesday and Thursday at the Hilton San Antonio. This forum brings together local and state officials, private sector developers, academics, large commercial users, and energy experts from the U.S. and Mexico. NADB's unique position as the only U.S.-Mexico binational development bank, has provided the Bank the opportunity to be involved in some of the most relevant clean energy projects developed in the last five years in the region. NADB has financed close to $1.5 billion for 35 projects with total costs of $5.2 billion. Roughly, 2,548 MW of new generation capacity is being installed along the border. The forum will center the dialogue on energy prosperity, innovation, financing, the future of energy markets, and crossborder opportunities along the U.S.-Mexico border, and how to continue building partnerships to advance both countries energy goals that ultimately improve economic development and protect the environment.

Senate Enviro Addresses Man-Made Trash – The Senate Environment Committee will hold a hearing on Wednesday at 10:00 a.m. reducing the impact of man-made trash on the environment, wildlife and human health. Witnesses include

Jonathan Baillie of the National Geographic Society, ACC's Cal Dooley, Coca-Cola North America's Bruce Karas and Kara Lavender Law of the Sea Education Association.

Senate Homeland Sec to Tackle PFAS Issues – The Senate Homeland Security Federal Spending Oversight and Emergency Management Subcommittee holds a hearing on Wednesday at 2:30 p.m. looking at the Federal role in PFAS. Witnesses include EPA's Peter Grevatt, DoD's Maureen Sullivan, HHS's Linda Birnbaum and GAO's Brian Lepore.

Forum to Look at Cyber Resilience – The US Energy Assn will hold a forum on Thursday at 10:00 a.m. on cyber resilience in the energy sector. Speakers from Marsh & McLennan Companies will present, including Paul Mee, North America Cyber Lead, Oliver Wyman, and Matt McCabe, Assistant General Counsel on Cyber Policy, will discuss how they work with companies in the energy sector to prevent, protect against, mitigate, respond to, and recover from cyber-attacks, thus helping them build true cyber resilience.

House Science Looks at Nuclear – The House Science Subcommittee on Energy will hold will hold a hearing on Thursday on advancing nuclear energy in the future. Witnesses include DOE Nuclear office head Ed McGinnis, Harlan Bowers of X-energy, MIT's John Parsons, and John Wagner of the Idaho National Laboratory.

House Energy Panel Hearing Set to Address DOE Modernization – The House Energy subpanel will host a hearing on Thursday at 10:15 a.m. to look at the DOE Modernization, focusing on the office of Cybersecurity, Energy Security and Emergency Response. Karen Evans, assistant secretary of cybersecurity, energy security and emergency response at DOE will testify.

Forum to Look at Carbon Tax Study – REMI will host a carbon tax discussion at its Washington, DC policy luncheon on Thursday with guest presenter Scott Nystrom, a Director at FTI Consulting, Inc. Alliance for Market Solutions commissioned FTI Consulting to evaluate the economic, fiscal and emission effects of a national revenue-neutral carbon tax. The study's authors applied this tax at the point of extraction or import, and simulated the implications of raising the cost of fossil fuels on the national, state, and industry levels. Nystrom, a co-author on the report, will review the proposal and the potential implications for the U.S. and state economies and major industries. He will also describe the methodologies behind the analysis of a revenue-neutral carbon tax.

Heritage to Host Sen. Johnson on Grid Security – Sen. Ron Johnson (R-Wis.) will address a forum Thursday at 2:00 p.m. at the Heritage Foundation on protecting the electric grid. The event will discuss the potential impacts of these events on American infrastructure and population, as well as the critical tasks that should be undertaken to minimize such a threat. Exelon's David Brown will join a panel after Johnson's remarks.

Forum to Look at Industrial Energy Consumers – Third Way, the AFL-CIO, and the Council on Competitiveness are hosting a forum to learn more about the benefits of smarter industrial energy use, and where policymakers can focus their efforts for maximum impact for industrial energy consumers. Speaker include AFL-CIO head Richard Trumka, Deborah Wince-Smith of the Council on Competitiveness, Third Way's Matt Bennett, Roxanne Brown of United Steelworkers and Craig Blue, Director of Energy Efficiency and Renewable Energy Programs at Oak Ridge National Laboratory.

Conservatives to Discuss Nuclear – Experts from the Breakthrough Institute, The Heritage Foundation, the ClearPath Foundation and R Street will hold a forum on Thursday at 3:00 p.m. looking at innovation and reform to the nuclear industry. After many years of failed attempts, a new path to an economically competitive domestic nuclear industry is close at hand. Nuclear micro-reactors (10 MW and smaller) allow for safe operation with radically simplified designs, making the case for far-reaching licensing and regulatory reform much stronger. Policy elements needed for a better future include licensing reforms at the Nuclear Regulatory Commission, extending the duration of federal purchase power agreements, and supporting construction of new fast reactors and advanced nuclear fuels.

Group to Honor Clean Energy Champs – On Thursday at 5:00 p.m. at the Capitol Hill Club, Citizens for Responsible Energy Solutions (CRES) will recognize its 2018 Clean Energy Champions. They include Sens. Lisa Murkowski (R-AK) and Tim Scott (R-SC), Reps Elise Stefanik (R-NY) and Tom Reed (R-NY) and Govs. Larry Hogan (R-MD) and Gary Herbert (R-UT).

PA Chambers, Unions, Members Join Manufacturing Conference – The Pennsylvania Energy and Manufacturing Forum will be held at the Energy and Innovation Center in Pittsburgh on Friday. The event, sponsored by the Consumer Energy Alliance, will feature Interior Sect Zinke, Williams CEO Alan Armstrong and LIUNA head Terry O'Sullivan. There will also be a bipartisan Congressional panel that features Reps. Mike Kelly, Connor Lamb, Keith Rolhfus, Bill Shuster, Mike Doyle and GT Thompson.

WCEE to Look at WOTUS Rule Issues – The Women's Council on Energy and the Environment (WCEE) and the GW Law Environmental & Energy Law Program host a forum on Friday at Noon at GW Law School to discuss the legal fight over the waters of the US rule and it matters, as well as its impacts on the Chesapeake region. Harvard Law's Caitlin McCoy will discuss the legal landscape of the proposed rule and the implications of some of its features. GWU's Tara Scully will speak to the biological impacts of the proposed rule, particularly in the Chesapeake Bay ecosystem.

IN THE FUTURE

EPA to Host ACE Hearing in Chicago – The EPA will host a single public hearing on its proposed replacement for the Clean Power Plan in Chicago on Monday October 1st at the Ralph H. Metcalfe Federal Building. The building is the home of EPA's Region 5 headquarters.

Cato Hosts Public Transit Debate – On Monday October 1st, the Cato Institute holds a Capitol Hill forum on the Federal role in public transit. Cato's Randall O'Toole and Jarrett Walker will debate. They will also hold a second round at Cato on following day, Tuesday October 2nd.

EEI Speaker to Discuss Renewables –Next Monday at 4:00 p.m., Johns Hopkins University ERE's Global Leaders Forum presents a discussion about the surge in US renewable energy consumption. In 2017 for the fourth successive year renewables accounted for more than 50 percent of the new US electric generation capacity additions. Steadily declining costs of wind and solar have been a major factor behind this surge, along with favorable policy support. The speaker, EEI's Lola Infante, will discuss these developments and describe which states are in the lead in expanding renewable sources of electricity as well as the future outlook.

Forum to Kick Off Smart Cities – CompTIA, the Smart Cities Council Policy Task Force, and the Smart Cities Caucus kick off Smart Cities Week – which returns to Washington, D.C. October 2-4. This event will feature speakers who will share not only "what's next" on the road to more livable, workable and sustainable smart cities – but also how to get there. Speakers include Rep. Yvette Clarke, Chairperson of the Smart Cities Caucus.

Ideas Forum Set for DC – The Atlantic Council and Aspen Institute are hosting the Atlantic Festival on October 2-4th at Sidney Harman Hall n DC. Atlantic editor Jeffery Goldberg, former Secretary of State Sen. John Kerry and NYT reporter/author Mark Leibovich are among the numerous speakers. In its 10th year, Washington Ideas has become The Atlantic Festival. The conference always includes in-depth interviews with some of today's biggest thinkers and leaders in technology, politics, business and the arts, we will illuminate new ideas, and grapple with the most consequential issues of our time.

CSIS to Look at Nuclear Navy Issues – The Center for Strategic & International Studies and the Naval Historical Foundation host a symposium next Tuesday about the history of nuclear power in the U.S. Navy, impacts the commercial nuclear energy industry has on the Navy, and key national security objectives. To discuss the historical context of this connection, the current state of affairs, and U.S. government action moving forward to mitigate the impacts of a declining nuclear power industry on the Navy and national security, CSIS is partnering with the Naval Historical Foundation to host this symposium.

JHU to Look at Clean Energy in Africa – Next Tuesday at 10:00 a.m., Johns Hopkins University holds a conversation on access and clean energy in Africa with Andrew Herscowitz, Coordinator of the US Power Africa Program. Herscowitz will interview JHU Professor Johannes Urpelainen,

TEPCO President to Look at Back at Fukushima – On Wednesday, October 3rd at 12:30 p.m., Johns Hopkins University hosts a forum on the Fukushima Daiichi Nuclear Power Plant accident. Steady progress has been made towards the reconstruction of Fukushima, the repopulation of surrounding areas, and the decommissioning of the plant, for which Tokyo Electric Power Company Holdings (TEPCO) will shoulder ¥16 trillion of the total ¥22 trillion estimated cost. Naomi Hirose, who endeavored to manage the Fukushima incident and spearheaded reform as President of TEPCO from 2012 to 2017, shares his insights into the current situation in Fukushima and elaborates on the implications of and lessons learned from the accident.

SEJ in Flint – The Society of Environmental Journalism holds its annual conference on October 3-6th in Flint. Of course, Bracewell hosts its annual event on Thursday October 4th.

ELI to Look at Waste Issues – Environmental Law Institute hosts a forum on Thursday, October 4th at 12:00 p.m. on waste issues. Expert panelists will explore the future of American waste, the potential for transformative sustainable innovation, and the regulatory aspects hindering and helping to establish a circular economy. In doing so, the panel will explore the possibilities of designing circular, waste-free economic, legal, and regulatory models to foster a cradle-to-cradle lifespan of material goods. Expert panelists will lead a dialogue on integrating the legal, social, environmental, and economic challenges of meaningful solutions to American waste.

Forum to Look at Utility of Future – Leaders in Energy will host a forum on Thursday evening October 4th at 5:30 p.m. at the US Navy Memorial looking at utilities of the future. Leaders in Energy event, in partnership with Resilient Virginia, will explore questions decarbonization and customer choice as well as examine pathways to a new paradigm for the electric grid. Speakers include EEI's John Caldwell, Cyril Draffin of the MIT Energy Initiative and EDF's Elizabeth Stein.

JHU to Discuss Offshore Wind – The John Hopkins University hosts a conversation on Friday, October 5th at 12:30 p.m. on offshore wind development. OSW in the US has suffered from fits and starts over the past decade. During this time, Europe has installed 15,780 MW of offshore generating capacity, coming from 4,149 grid-connected turbines in 11 countries. Cumulatively, this represents Euro74.1 Billion (approx. US$91.8 BN) of investment in the European offshore wind industry. But recent initiatives in several Northeastern states give cause for optimism that this time. Clean energy expert Robert Gurman will address the subject.

EPA to Host Meeting on Oil, Gas Wastewater Study – The EPA will host a public meeting on October 9th on an oil and gas wastewater study

ClearPath, EPIC, ACCF host Forum on R&D Investments – On October 10, The Energy Policy Institute at the University of Chicago (EPIC), in partnership with ClearPath and the American Council for Capital Formation, will hosting discussions on lessons gleaned from research and practical experiences. The conversations will provide insight into how to translate research findings into actionable policy and industry approaches that can drive clean energy innovation.

WAPA Rally Set for VA Countryside – The Washington Automotive Press Association is hosting its 2018 Rally in the Virginia countryside on Thursday, October 11th at Summit Point Motorsports Park. As in the past, attendees will be able to experience a behind-the-wheel test of a large number of new vehicles from many automotive manufacturers. Representatives from the manufacturers will be on hand, so this is a great opportunity to network with them and other members.

Northam to Headline Offshore AWEA Wind Conference – AWEA will host its annual Offshore WINDPOWER Conference on October 16th and 17th in Washington DC. Virginia Governor Ralph Northam will speak at this year's Conference, along with Norwegian Energy Minister Kjell Børge Freiberg. Interior's James Bennett and our friends Stephanie McClellan of UDel's Wind Initiative and Bloomberg NEF's Ethan Zindler.

Forum to Look at Wood – In recognition of National Forest Products Week, the Environmental and Energy Study Institute (EESI) hosts a forum on October 23rd on Capitol Hill that discusses an innovative class of structural wood building materials. This briefing will bring together experts to tell the emerging story of the U.S. mass timber industry and how to capitalize on its potential. Speakers will include Sen Angus King.

Shale Insight Set For Pittsburgh – Shale Insight 2018 is set for Pittsburgh on October 23-25. The Marcellus Shale Coalition (MSC) hosts the event along with the Ohio and West Virginia Oil & Natgas Assns. SHALE INSIGHT™ offers insightful pre-conference workshops, technical and public affairs sessions, national keynote addresses, and high-powered networking sessions will provide attendees, sponsors, and exhibitor's unprecedented access to the industry's most influential leaders and innovators. You can see the agenda HERE.

FRANK MAISANO
Senior Principal
Ext. 5864
Policy Resolution Group

Message

From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 9/28/2018 2:22:52 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: The slow-motion trainwreck...

View this email in your browser

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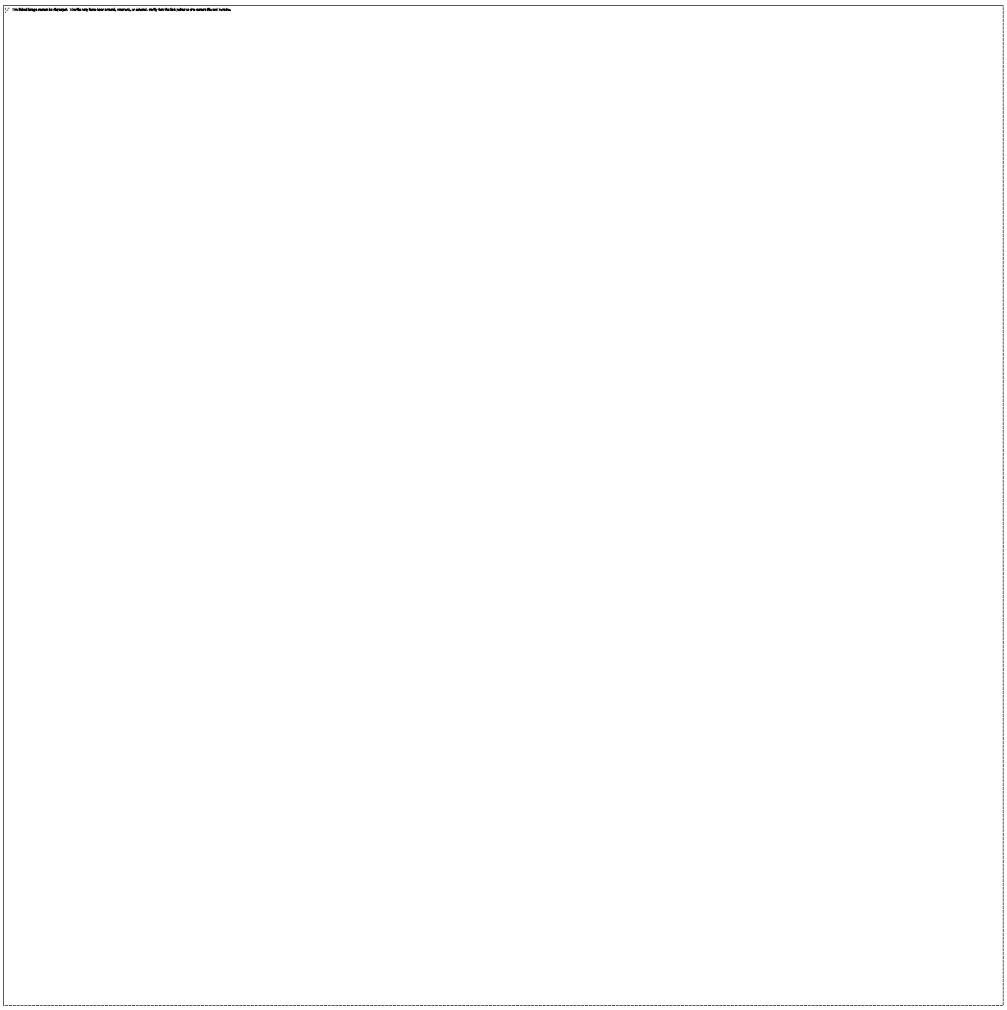
Is starting to speed up.

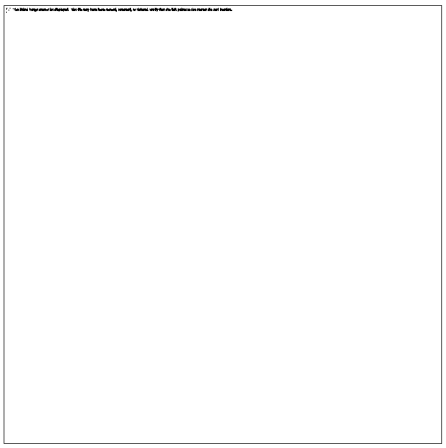
CNBC (9/27/18) reports: "Tesla CEO Elon Musk has been sued by the Securities and Exchange Commission for fraud, according to court documents filed Thursday. Sources close to the company told CNBC the company was also expecting to be sued, though Tesla was not named as a defendant in the complaint. Shares of the automaker fell more than 13 percent in extended trading Thursday. The stock is roughly 30 percent below its 52-week high of $387.46."



That's below the Yelp equivalent of the Mendoza Line.

Greentech Media (9/26/18) reports: "Amid the hype and misinformation swirling around Tesla's electric vehicle drama, it's easy to forget that Tesla is also the

owner of SolarCity, once the largest residential solar installer in the world...So, how is Tesla's residential solar group performing?...With the caveat that Yelp is self-selecting and people tend to complain online more than praise, here is a less-than-scientific sample of reviews from that site. Yelp is a local-based app and gave me reviews for the San Francisco Bay Area — from San Jose in the south of Silicon Valley to Marin in the north. I sorted through a total of 304 reviews and tallied only those from this year and last. Out of a total of 87 reviews from 2017 and 2018: 66 people gave one star, the lowest possible rating, 8 people gave two stars, 1 person rated three stars, 3 people gave four stars, (and) 10 people gave five stars, the highest possible rating."



"Everything needs to be updated occasionally. It's been far too long since this was updated. The Endangered Species Act is not being maligned. It is just not working. It has not focused enough on recovery and delisting of species."

– Rep. Rob Bishop, R-Utah

Feeding the crocodile...

Daily Caller (9/26/18) reports: "Royal Dutch Shell is choosing to sit out of a carbon tax fight in Washington state, a markedly different approach than other major oil companies who are campaigning against the initiative. In what could be a sign of the oil industry's evolving approach to climate change regulation, Shell has opted not to campaign against a ballot initiative in Washington that

calls for the implementation of a carbon tax, a fee levied on energy companies according to the amount of carbon dioxide they emit into the atmosphere. While Shell's CEO has criticized parts of the proposal, he ultimately said his company would not participate in an effort to block it."

When will we hit the cap on the number of economic bozos in Congress?

The Hill (9/26/18) reports: "The future of electric cars is in Congress's hands, with lawmakers divided over whether to extend a popular tax credit. Electric car manufacturers are only allowed to offer a federal tax break on their first 200,000 vehicles sold under a 2009 law, and many are now hitting that cap, most notably Tesla. That's setting off a fight in Congress, where Democrats are eager to extend the breaks and help the growing electric car industry but Republicans hope to end what they see as an unnecessary subsidy. 'It's crazy that we might allow the electric vehicle tax credit to run out just as the American electric vehicle market is starting to gain a foothold,' said Sen. Jeff Merkley (D-Ore.), who leads a group of senators who introduced a bill last week that would lift the cap."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance

Myron Ebell, Competitive Enterprise Institute

Phil Kerpen, American Commitment

William O'Keefe, George C. Marshall Institute

Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity

Joe Bast, Heartland Institute

David Ridenour, National Center for Public Policy Research

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Sabrina Schaeffer, Independent Women's Forum

George Landrith, Frontiers of Freedom

Thomas A. Schatz, Citizens Against Government Waste

Richard Manning, Americans for Limited Government

Adam Brandon, FreedomWorks

Rich Collins, Positive Growth Alliance

Craig Richardson, E&E Legal

The Honorable George Allen, American Energy Freedom Center

Dick Patten, American Business Defense Council

Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute

Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $72.12

Natural Gas: ↓ $3.02

Gasoline: ↑ $2.88

Diesel: ↑ $3.20

Heating Oil: ↑ $232.69

Brent Crude Oil: ↑ $82.14

US Rig Count: ↑ 1159

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on behalf of Erin Amsberry [eamsberry@energydc.org]
Sent: 9/19/2018 3:52:27 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Free Market Coalition Urges "No More Handouts for Rich Tesla Drivers"

FOR IMMEDIATE RELEASE
September 19, 2018

MEDIA CONTACT: ERIN AMSBERRY
202.621-2955

Free Market Coalition to Congress: Don't Extend the Federal Electric Vehicle Tax Credit

WASHINGTON – This morning, a coalition of 30 free market policy groups, led by the American Energy Alliance, sent a letter to House Ways and Means Committee Chairman Kevin Brady objecting to any expansion of the federal electric vehicle tax credit.

The letter encourages Chairman Brady to reject attempts by the EV lobby and their allies in Congress to slip a tax-credit cap increase into upcoming spending packages. Congress has a responsibility to spare American taxpayers increased economic harm from a subsidy that benefits only those who can afford expensive electric vehicles.

American Energy Alliance President Thomas J. Pyle made the following statement:

"The electric vehicle tax credit subsidizes expensive vehicles that only a fraction of wealthy Americans want and that do not necessarily pollute less than modern internal combustion engines.

"Why should a typical middle class American family — with a median annual income of $44,000 — subsidize the lifestyles of the rich and famous? Political leaders should recognize that Americans can make their own decisions about how to spend their money and what cars they want to drive. We shouldn't give handouts to wealthy individuals to help defray the cost of their luxury vehicles."

The letter was signed by the following organizations who share AEA's wariness of the irresponsibility of extending this massive government handout:

American Energy Alliance | ALEC Action | American Commitment | American Conservative Union | American Consumer Institute | American Legislative Exchange Council | Americans for Limited Government | Americans for Prosperity | Americans for Tax Reform | Caesar Rodney Institute | Center for Freedom and Prosperity | Civitas Institute | Competitive Enterprise Institute | Consumers Action for a Strong Economy | Council for Citizens Against Government Waste | E&E Legal Institute | Freedom Foundation for Minnesota | FreedomWorks | Frontiers of Freedom | Georgia Public Policy Foundation | Heartland Institute | Heritage Action | Hispanic Leadership Fund | Independence Institute | Less Government | Mississippi Center for Public Policy | National Black Chamber of Commerce | National Tax-Limitation Committee | Rio Grande Foundation| Taxpayers Protection Alliance

The full letter can be read here.

For more on electric vehicles, click here, here, and here.

###

For media inquiries, please contact Erin Amsberry
eamsberry@energydc.org
202.621.2955

AEA is a not-for-profit organization that engages in grassroots public policy advocacy and debate concerning energy and environmental issues. AEA is the advocacy arm of the Institute for Energy Research, a tax-exempt public foundation that conducts intensive research and analysis on global energy markets.

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Subject: Welcome to the future

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MORNING ENERGY NEWS | 1.31.2019

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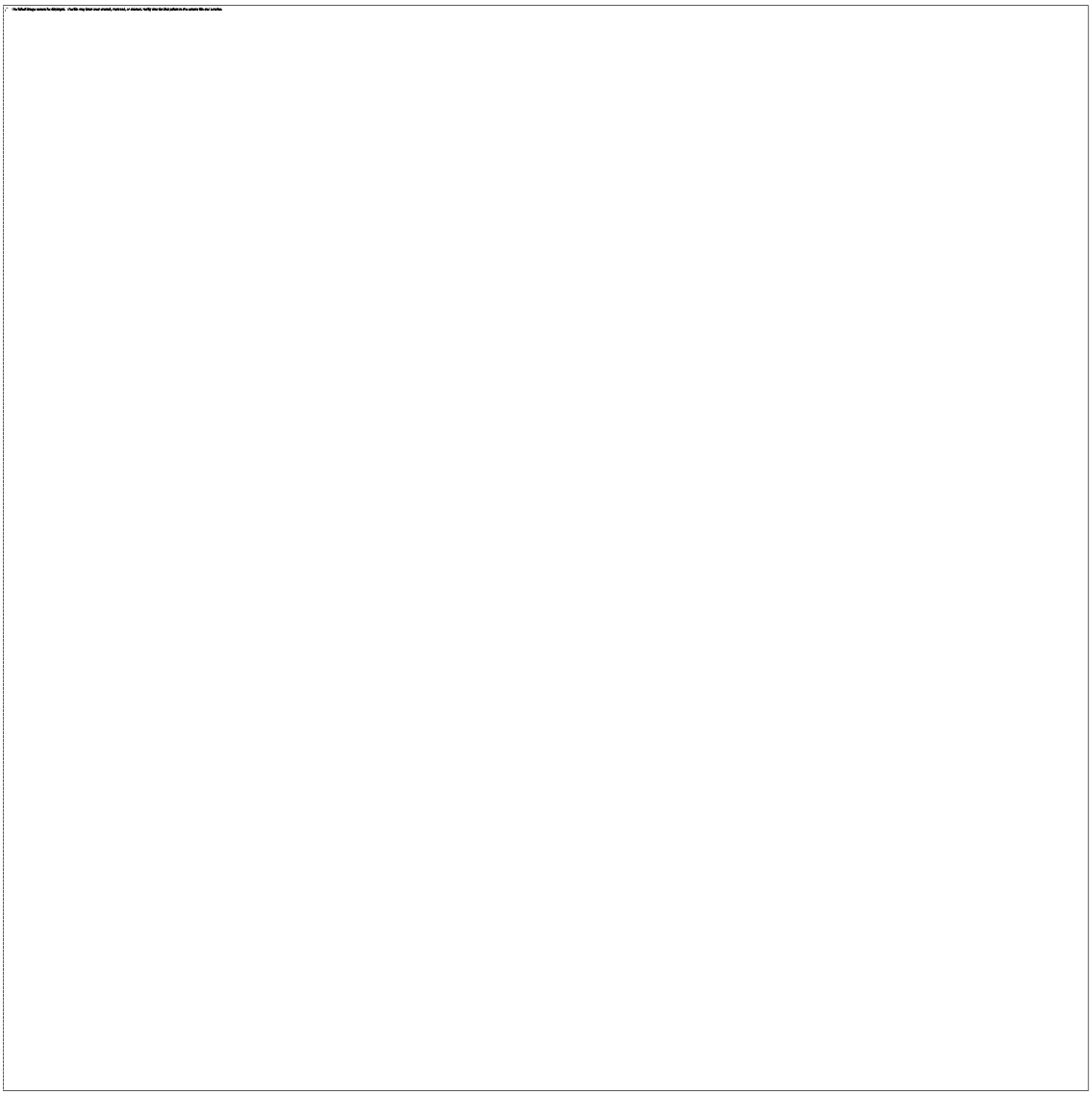
How many elderly, sick, or poor people must be sacrificed for the Green New Deal?

CBS Minnesota (1/30/19) reports: "Xcel Energy is advising residents in parts of central Minnesota north of the metro to turn down their thermostats and reduce their natural gas use. According to the energy provider, the extreme weather conditions have resulted in a "significant" strain on Xcel Energy's natural gas system. 'We need those in Becker, Big Lake, Chisago City, Lindstrom, Princeton, and Isanti to reduce use of natural gas. Until further notice, you are urged to turn down your thermostat to 60 degrees or lower and avoid the use of other natural gas appliances including hot water,' Xcel Energy said."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"Climate alarmists' increasingly shrill claims, their refusal to engage climate and energy realists in debate ... their escalating efforts to silence us – are proof that they are getting desperate. We need to continue ramping up our efforts – and cajole, embarrass and harangue politicians to show some spine, intestinal fortitude and intelligence, by standing up to the forces of climate dictatorship and darkness."

– Paul Driessen, Heartland Institute

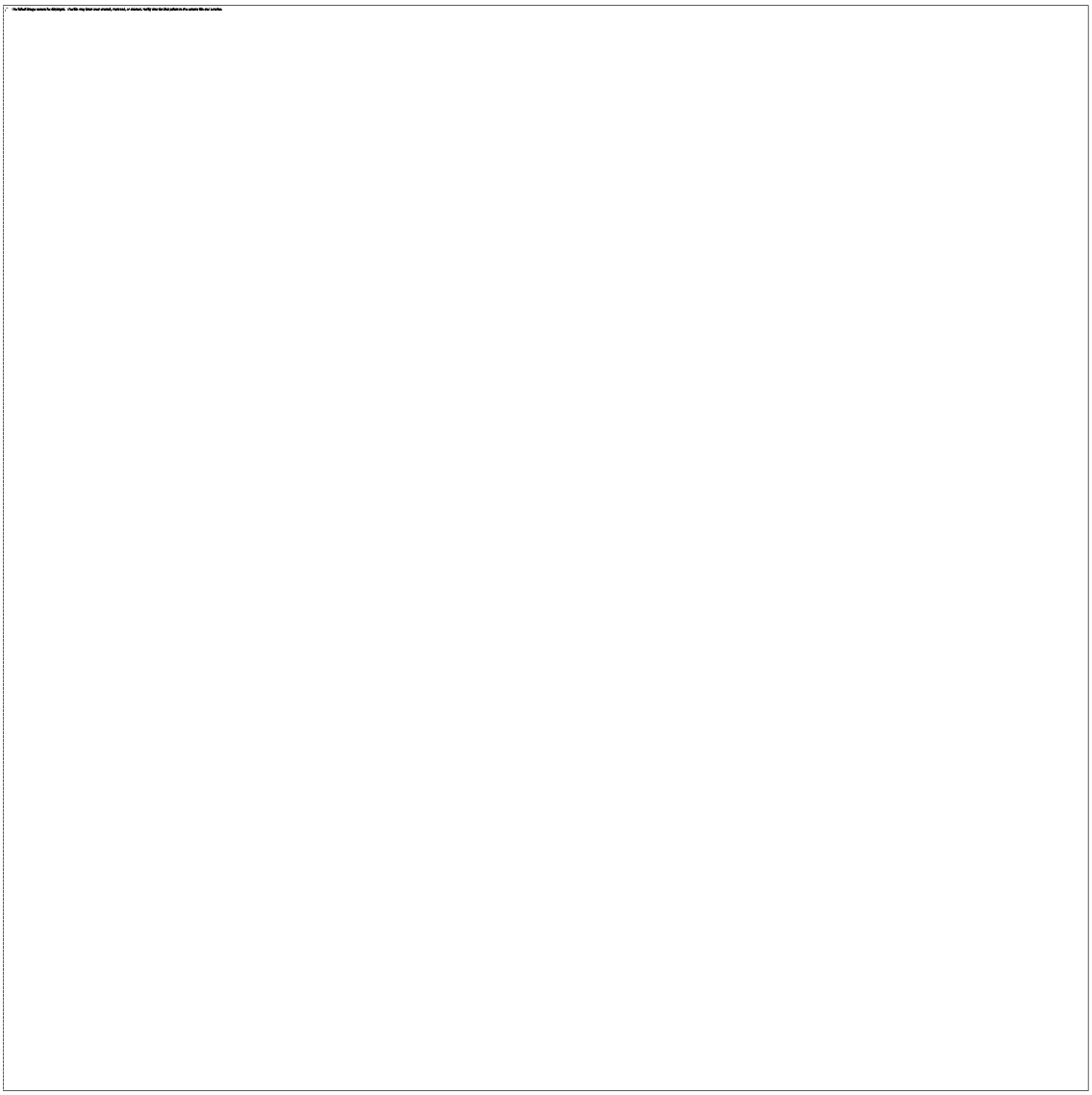
EIA's New England energy dashboard puts the region's pipeline crisis in focus.

Energy In Depth (1/25/19) reports: "New England's energy crunch has hit such crisis levels that the Energy Information Administration this week launched a dashboard to track it, further illustrating the dangerous and false narrative put forth by "Keep It In the Ground" activists that the region doesn't need more pipeline infrastructure. As EIA explains, 'Energy delivery infrastructure constraints and outages can have a pronounced influence on New England's wholesale energy prices, energy flows, and operations. As a result, the New England Dashboard illustrates these constraints.' EIA's dashboard will allow consumers to monitor everything from pricing to potential outages on a daily basis. Although it currently includes data for only a few days under 'normal' market conditions, the information is already incredibly insightful."

Horner locks horns with Virginia AG in court.

Daily Caller (1/29/19) reports: "A Virginia court ruled Monday against Virginia Attorney General Mark Herring's attempt to hide information from a Washington, D.C., think tank seeking information about the state's role in an attorney general-led climate crusade. The Competitive Enterprise Institute sued Herring in 2018 for attempting to evade a Freedom of Information Act case seeking reasons why the Democratic attorney general denied requests for information confirming the state's authority to hire privately funded lawyers. CEI's Chris Horner argued state law only allows assistant

attorneys general to be paid through taxpayer expense. Herring applied for a program in September 2017 that was designed to hire privately funded lawyers to work on environmental litigation through a group founded by former New York City Mayor Michael Bloomberg. Herring's office claimed it reviewed Virginia's laws and found no problems with the arrangement."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~~global warming~~, ~~climate change~~, climate crisis...

NewsBusters (1/30/19) analysis: "Remember 'Global Warming?' Well, after a few years of usage ending in a lot of mockery when it didn't appear to happen due to a 'pause,' that phrase was quickly replaced by liberals by the more general 'Climate Change.' However, don't get too used to that term since it will soon be ditched to be replaced by a less 'partisan' term in order to sell the public on what was initially called 'Global Warming.' In fact, not only will there soon be a new term for 'Climate Change' but a whole slew of new terminology as a PR effort to sell the public on the same old agenda with pretty new words according to the January 27 *Politico Magazine* in an article by Bryan Bender: 'The New Language of Climate Change.' The subtitle informs us that the public will become like test animals to determine how well the marketing strategy works: 'Scientists and meteorologists on the front lines of the climate wars are testing a new strategy to get through to the skeptics and outright deniers.'"

Shot

Chaser

The Northeast struggles because Andrew Cuomo wants to run for president.

Freight Waves (1/25/19) reports: "Residents of Northeastern states are struggling with increased electricity costs and an unreliable energy supply as elected officials contemplate expanding natural gas pipelines in the region. Con Edison, a New York utility provider, announced on January 18 a moratorium on new natural gas customers in Westchester County, beginning on March 15. The reason given by the utility was 'new demand for gas is reaching the limits of the current supplies to our service area.'"Politico reported that New York State's reluctance to construct new natural gas pipelines is preventing adequate supplies from reaching growing economic centers in New York City, Long Island and Yonkers. 'The New England states used to be dependent on coal, oil, nuclear and hydroelectricity,' said Dan Kish, senior fellow at the Institute for Energy Research. 'And they've shifted quickly to natural gas for generation, and they've shifted so fast that its caused huge draws of natural gas into the system [pipelines] without increasing infrastructure.'"

Energy Markets

WTI Crude Oil: ↑ $54.26
Natural Gas: ↑ $2.88
Gasoline: ↑ $2.26
Diesel: ↑ $2.92
Heating Oil: ↑ $190.49
Brent Crude Oil: ↑ $61.85
US Rig Count: ↑ 1085

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Subject: Switching to science realism could save you 15 percent or more...

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In the Pipeline

MORNING ENERGY NEWS | 11.30.2018

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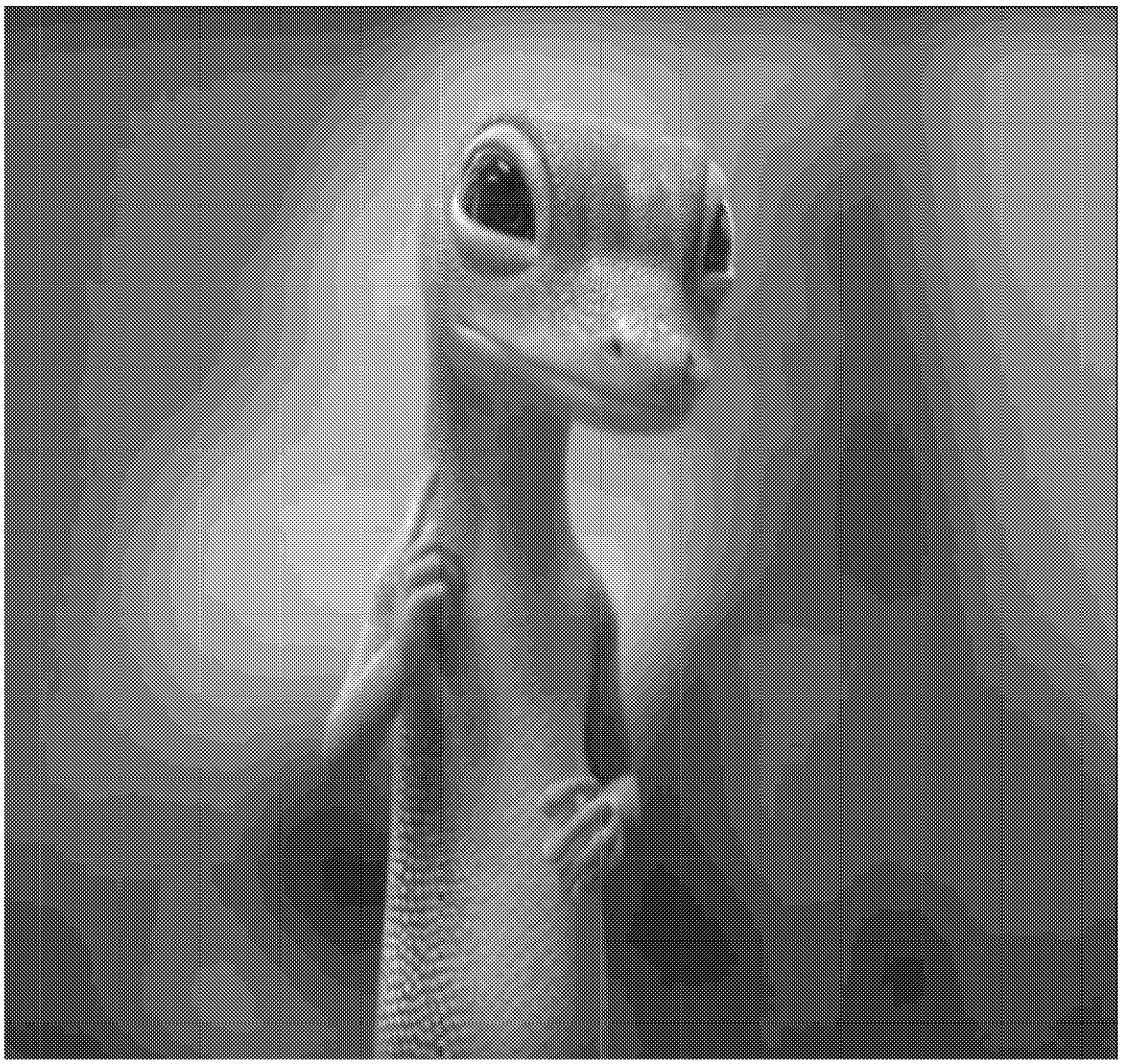
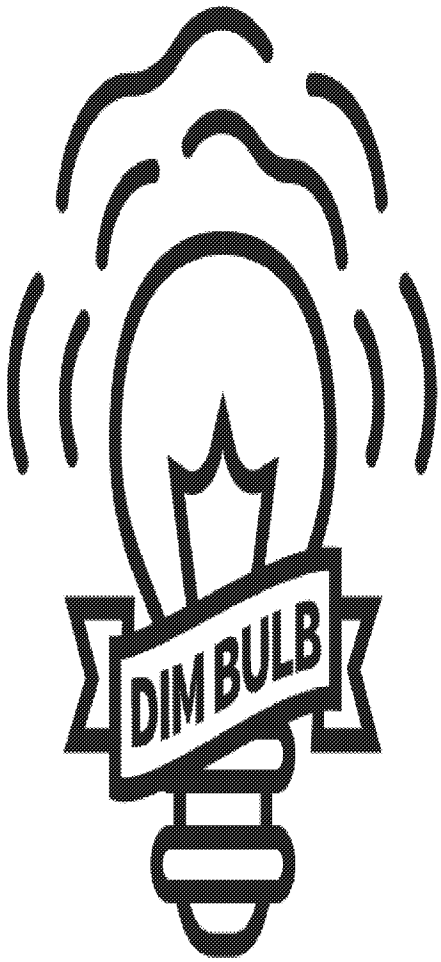
Real science, real savings.

New York Post (11/28/18) op-ed: "Conjecturing that the temperature-mortality relationship in the US would remain constant over a century is ludicrous. This assumes that even if temperatures were to increase by 14 degrees, people would die in masses, ignoring the fact that people have been shown to adjust over time to temperature changes. Then, too, over the 80 years until 2100, people can make many additional changes that reduce this risk, from getting air conditioners to changing how they build structures. So, the well-reported idea that warming will shrink the economy by 10 percent disregards huge economic growth, assumes twice the damages of the worst-case temperatures the report itself expects and even then only finds such high costs stemming almost exclusively from easily preventable heat deaths. While activists overstate the costs of climate change, they suggest its reversal is simply a matter of political will. In fact, there are significant costs to climate action: It often involves

replacing relatively cheap, efficient fossil fuels with still-uncompetitive green-energy sources."





"From now on, our best bet by far is to invest in renewable resources, which is solar and wind, and let the fossil fuel technologies be what they are and belong to what they belong to, which is the past."

– Tom Steyer, NextGen

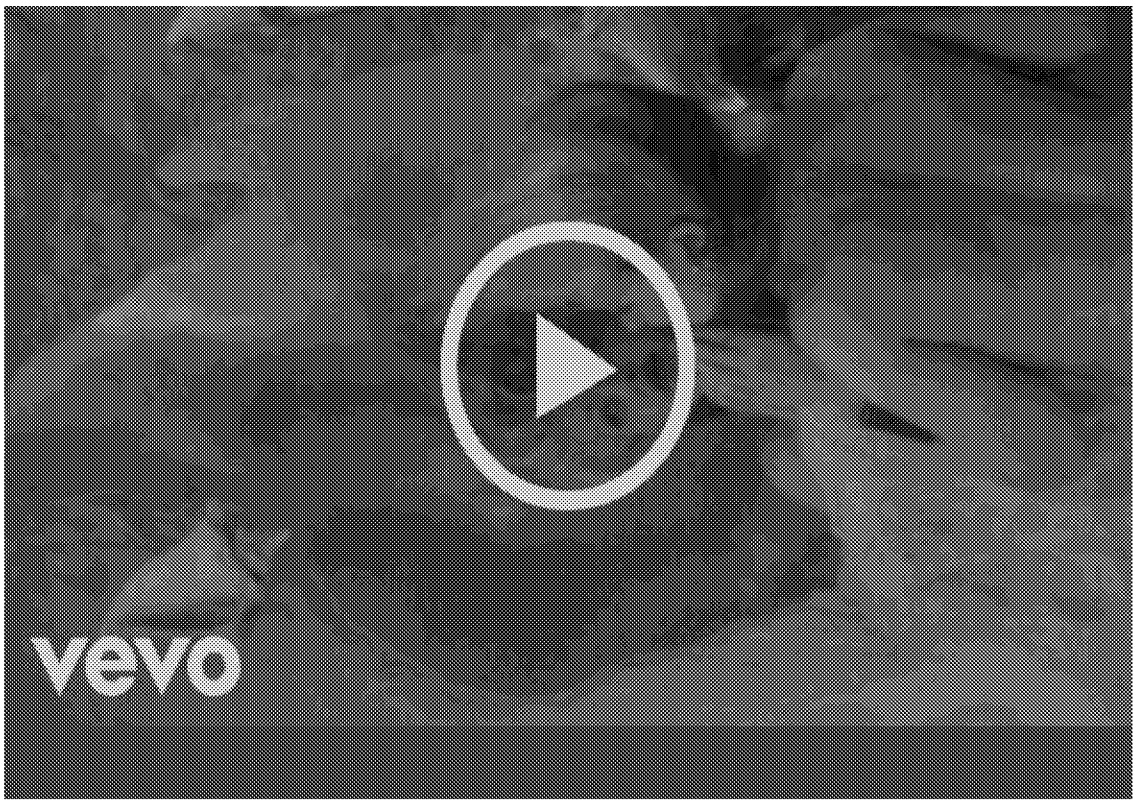
Should we start calling Steyer a geology denier?

Houston Chronicle (11/29/18) reports: "The United States has surpassed the 1970 record for proven oil and gas reserves, roughly doubling the amount of discovered petroleum in the ground in the past decade, the federal government said Thursday. The U.S. shale boom has unlocked large volumes of oil and gas, currently driven by drilling for crude oil in West Texas' booming Permian Basin and for natural gas in the Marcellus and Utica plays in Pennsylvania and neighboring states. The U.S. shale boom has unlocked large volumes of oil and gas, currently driven by drilling for crude oil in West Texas' booming Permian Basin and for natural gas in the Marcellus and Utica plays in Pennsylvania and neighboring states. Proven reserves of crude oil in the U.S. jumped almost 20 percent to 39.2 billion barrels by the end of 2017, setting a record. The previous record, in 1970, was 39.0 billion barrels. The U.S. is churning out a record of 11.7 million barrels of crude a day, the Energy Department estimates."

I see your Trudeau colors shining through.

Edmonton Journal (11/28/18) reports: "If Prime Minister Justin Trudeau wants to save automotive jobs, he should 'prove it' and kill the planned federal 'carbon

tax,' Premier Doug Ford says. The Ontario Premier let loose on Trudeau, Unifor President Jerry Dias, General Motors and NDP Leader Andrea Horwath Wednesday, accusing them all of offering GM workers false hope that their jobs can be saved. 'All we hear is a bunch of powerful people grandstanding, deflecting, selling false hope, making empty promises but in private, they know the GM plant is not coming back.' Ford said, after an 'emergency' cabinet meeting Wednesday on the pending shutdown. 'A few words to the Prime Minister—your officials have said in response to this crisis all options are on the table–prove it…scrap your carbon tax.'"



We're all for innovation...just don't reach your hands into our pockets to pay for it.

Reuters (11/29/18) reports: "When countries gather on Sunday to hammer out how they will enact pledges to cut carbon emissions, a Norwegian-led oil consortium will offer a solution: pump some of your excess carbon dioxide to us and we could store it for you...(P)roponents of CCS will be lobbying hard at the two-week climate conference in Katowice, Poland, for the extensive investment and regulatory change required to employ it at scale, citing U.N. assessments that it could play a role. 'The expectation is that Katowice will be important,' said Stephen Bull, a senior vice president at Norwegian state-controlled oil company Equinor, which is involved in developing a CCS project called Northern Lights. 'CCS is the only way to go,' he said, arguing that countries need the technology to help fulfill the pledges they made around the time of the breakthrough Paris climate change agreement in 2015."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance

Myron Ebell, Competitive Enterprise Institute

Phil Kerpen, American Commitment

William O'Keefe, George C. Marshall Institute

Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity

Joe Bast, Heartland Institute

David Ridenour, National Center for Public Policy Research

Grover Norquist, Americans for Tax Reform

Sabrina Schaeffer, Independent Women's Forum

George Landrith, Frontiers of Freedom

Thomas A. Schatz, Citizens Against Government Waste

Richard Manning, Americans for Limited Government

Adam Brandon, FreedomWorks

Rich Collins, Positive Growth Alliance

Craig Richardson, E&E Legal

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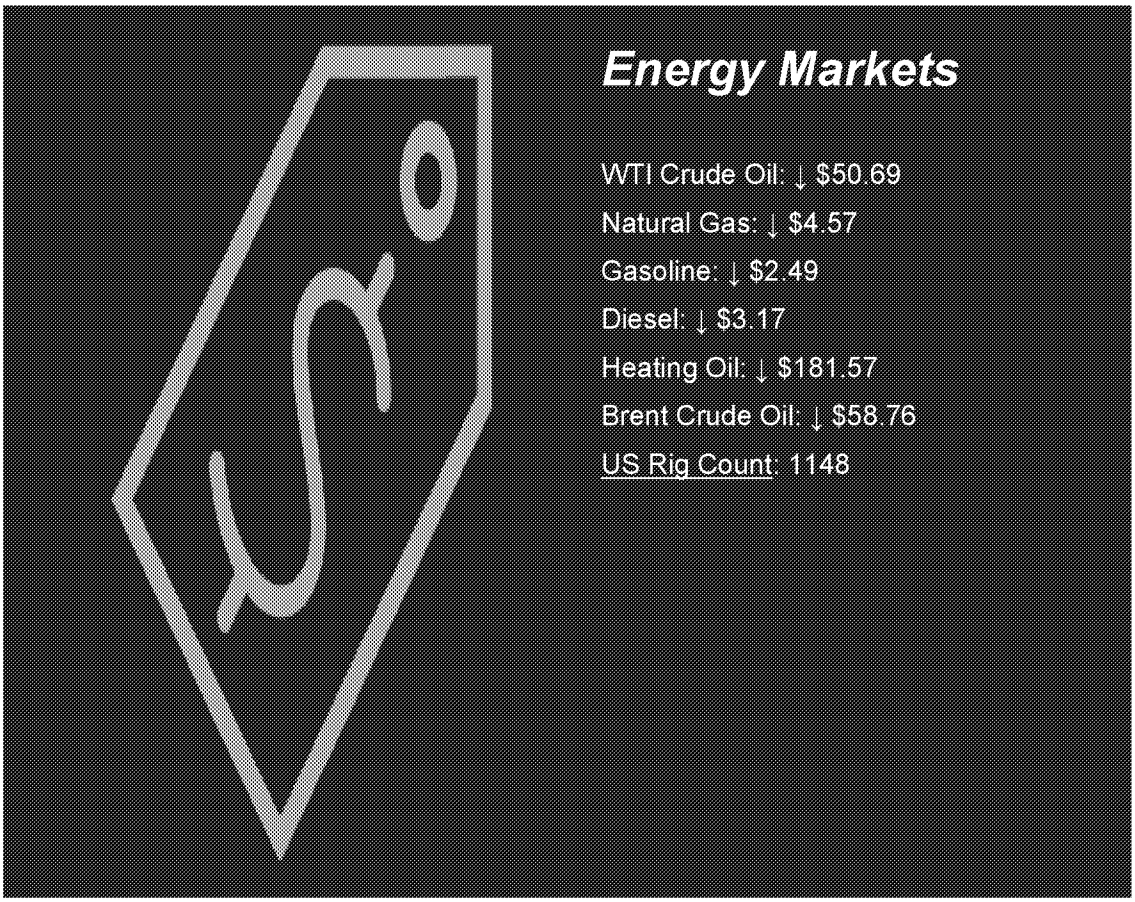
Jack Ekstrom, PolicyWorks America



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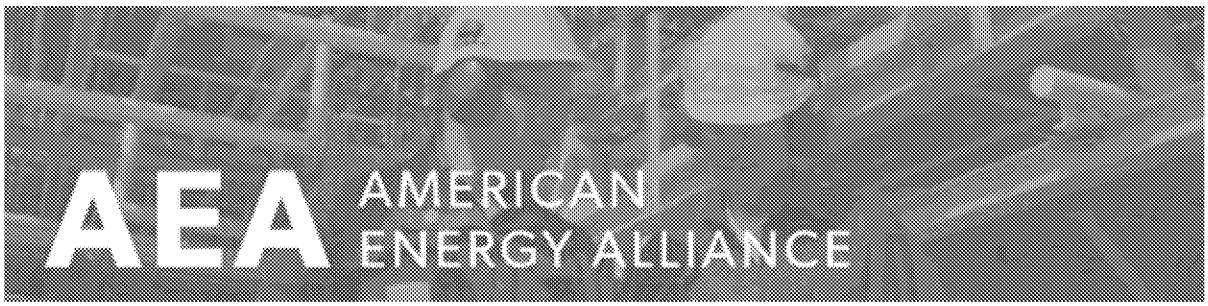
Subject: RELEASE | Coalition to Congress: No EV Tax Credit Extension



FOR IMMEDIATE RELEASE
November 29, 2018

MEDIA CONTACT: ERIN AMSBERRY
202.621-2955

Free Market Coalition Urges Congress: Don't Extend the Electric Vehicle Tax Credit

WASHINGTON – In light of recent conversations in Washington surrounding the electric vehicle tax credit, this afternoon, a coalition of 28 free market policy groups, led by the American Energy Alliance, sent a letter to House and Senate leaders objecting to any expansion of the federal electric vehicle tax credit.

The letter encourages Republican congressional leaders to reject attempts by the EV lobby and their allies in Congress to slip a tax credit cap increase into upcoming legislative and extender packages.

American Energy Alliance President Thomas Pyle made the following statement:

"The electric vehicle tax credit was signed into law under the condition that it would be temporary and that it would only apply to the first 200,000 vehicles sold per manufacturer. The authors' intension behind the law was to reduce the country's dependence on foreign oil. The tax credit is no longer needed as America now leads the world in energy production. The time has come for the tax credit to end. Under no circumstances should the cap be lifted in this lame-duck session of Congress. We shouldn't be giving handouts to wealthy individuals to offset the costs of their luxury vehicles."

The letter was signed by the following organizations who share AEA's objection to taxpayers footing the bill for another massive government handout:

American Energy Alliance | American Commitment | American Conservative Union | American Consumer Institute | Americans for Limited Government | Americans for Prosperity | Americans for Tax Reform | Caesar Rodney Institute | Center for Freedom and Prosperity | Civitas Institute | Competitive Enterprise Institute | Consumers Action for a Strong Economy | Council for Citizens Against Government Waste | E&E Legal Institute | Freedom Foundation for Minnesota | FreedomWorks | Frontiers of Freedom | Georgia Public Policy Foundation | Heartland Institute | Heritage Action | Hispanic Leadership Fund | Independence Institute | Less Government | Mississippi Center for Public Policy | National Black Chamber of Commerce | National Tax-Limitation Committee | Rio Grande Foundation| Taxpayers Protection Alliance

The letter sent to U.S. House leaders can be read here. The letter sent to U.S. Senate leaders can be read here.

For more on electric vehicles, click here, here, and here.

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For media inquiries, please contact Erin Amsberry
eamsberry@energydc.org
202.621.2955

AEA is a not-for-profit organization that engages in grassroots public policy advocacy and debate concerning energy and environmental issues. AEA is the advocacy arm of the Institute for Energy Research, a tax-exempt public foundation that conducts intensive research and analysis on global energy markets.

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To: Woods, Clint [woods.clint@epa.gov]
Subject: 'm a sensitive soul, though I seem thick-skinned

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MORNING ENERGY NEWS | 11.29.2018

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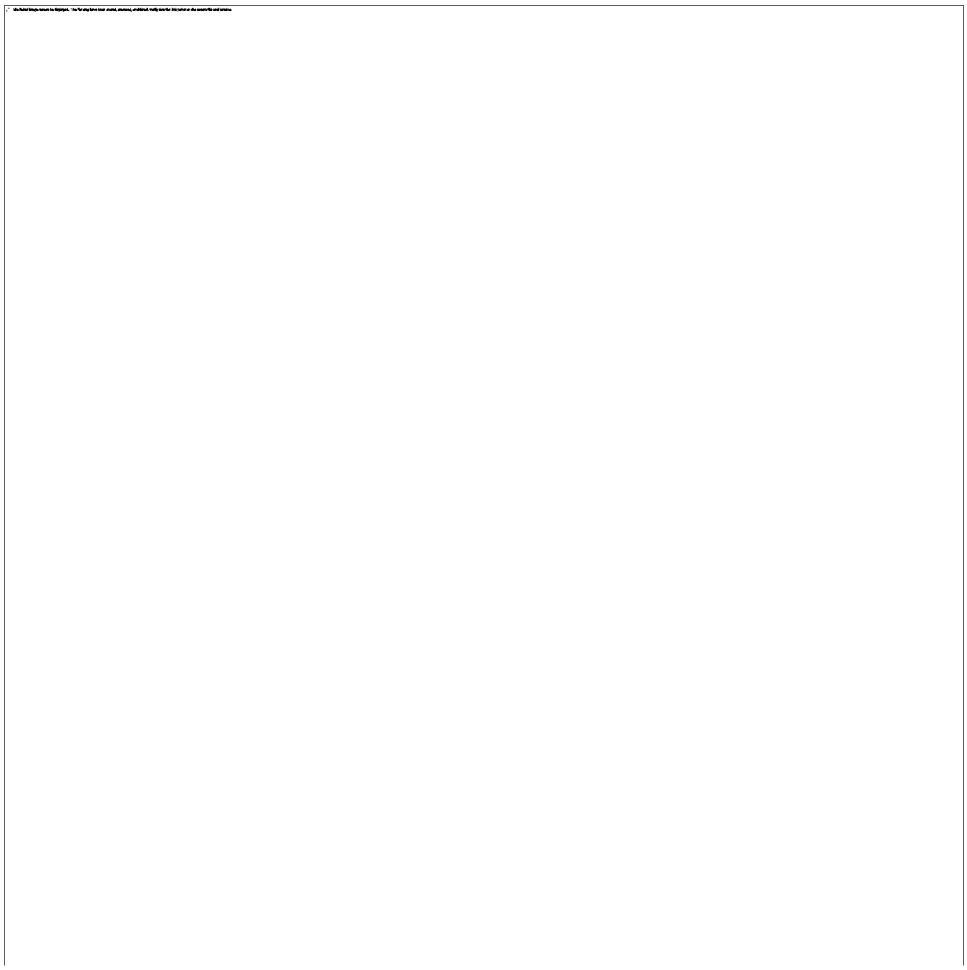
Pig power!

The Hill (11/28/18) reports: "The world's largest pork producer Smithfield Foods will work with Virginia-based Dominion Energy to harness methane gas from the thousands of pigs Smithfield rears each year. The two companies will spend $125 million over 10 years to try to harness gases from hog lagoons in North Carolina, Virginia and Utah to fight climate change, The Washington Post reported. The effort will be one of the largest attempts to convert animal waste into energy and could help contain American agricultural emissions, which make up about 9 percent of the U.S.'s footprint, according to the Post."



"Just last month, the Intergovernmental Panel on Climate Change proposed a carbon tax of between $135 and $5,500 by the year 2030. An energy tax of that magnitude would bankrupt families and businesses and undoubtedly catapult the world into economic despair. These policies would simply divert resources away from more valuable use, such as investing in more robust infrastructure to protect against natural disasters or investing in new technologies that make Representative Concentration Pathway 8.5 even more of an afterthought than it already should be."

– Nick Loris, The Heritage Foundation

The rebirth of offshore natural gas in the Gulf.

Houston Chronicle (11/27/18) reports: "New projects in the Gulf of Mexico are expected to reverse nearly 20 years of declines in offshore natural gas production, a new report from the U.S. Energy Information Administration shows. Offshore natural gas production in the U.S. waters of the gulf has steadily been declining since 2001. However, new field starts are expected to slow or reverse that long-term trend. At least 10 new offshore platforms in the U.S. waters of the gulf are expected to begin producing natural gas by the end of 2018 and another eight are expected to begin production in 2019.

Shot:

Chaser:

The Clean Energy D.C. Omnibus Amendment Act of 2018 sounds like something you would find in a Philip K. Dick novel.

Utility Dive (11/28/18) reports: "The D.C. Council's pending energy omnibus highlights how a number of American cities are strengthening their environmental and clean energy policies in the face of deregulatory actions from the federal government. More than 90 U.S. cities and towns have already committed to sourcing their electricity from 100% renewable resources, according to the Sierra Club, which keeps a running list. For most jurisdictions, compliance with those mandates will mean buying renewable energy credits (RECs) to offset the amount of electricity generated by fossil fuels to serve the city's power needs."

The greens must hate the fact that U.S natural gas lifts people out of poverty.

Energy In Depth (11/27/18) reports: "Natural gas plays a significant and growing role in meeting demand for energy in developing countries where access is far from universal, according to data recently released by the International Energy Agency (IEA). At least 1 billion people are without electricity worldwide, the agency reported. Increased natural gas production has positioned the United States to help decrease that number and provide developing nations with the tools to increase access to energy – a key building block for reducing poverty and improving air quality."

Energy Markets

WTI Crude Oil: ↑ $51.29
Natural Gas: ↓ $4.58
Gasoline: ↓ $2.51
Diesel: ↓ $3.18
Heating Oil: ↑ $184.65
Brent Crude Oil: ↑ $59.69
US Rig Count: ↑ 1150

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Subject: There be wolves among us.

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MORNING ENERGY NEWS | 2.18.2019

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Bloomberg (2/14/19) feature: "Even before Representative Alexandria Ocasio-Cortez of New York and Senator Ed Markey of Massachusetts, both Democrats, introduced their Feb. 7 resolution outlining a 'Green New Deal,' members of both parties were calling the idea unrealistic or worse. Republican Mike Simpson of Idaho, who sits on the House Appropriations Committee, said it was 'loony' without specifying why, and John Barrasso, Republican chairman of the Senate Committee on Environment and Public Works, labeled it an 'absurd socialist manifesto.' Even House Speaker Nancy Pelosi, who's been fearless in the face of Republican opposition on other issues, failed to bless it. The plan's greatest flaw, critics say, is that it would be too costly. Ocasio-Cortez advocates deficit spending, and she's floated a 70 percent marginal tax rate for high earners that would generate some of the necessary revenue. But those worried about where the rest of the money will come from are forgetting one major, surprisingly enthusiastic player: Wall Street."

"(T)here is an appropriate word for the political system [the Green New Deal architects] seek to institute—it is communism. We know from history that the appropriate color to describe communism is not green, but a deep, bloody red."

– Iain Murray, Competitive Enterprise Institute

Pay no attention to the usurper detaining and killing protesters—let's focus on the glaciers.

E&E News (2/15/19) column: "When stories are written about the Venezuelan crisis that has turned a tenth of the country's population into refugees, climate change isn't in the headlines. But while global warming isn't in the foreground of the Venezuelan story, it may be part of the backdrop. That's because much of the country's last decade has been marked by a severe and persistent drought, an occurrence that scientists say will become more frequent due to warming. Venezuela has also lost four of its five glaciers since the 1990s."

And yet Aussies in Adelaide can't get reliable air conditioning.

Axios (2/15/19) column: "Coal exports out of this resource-rich nation brought in record-high revenue last year, according to government data released this month...As concerns about climate change grow, coal is considered on its way out. But for many growing economies in Southeast Asia that are Australia's biggest coal customers, it's often seen as the preferred, cheapest electricity

option...Coal exports brought in a record $66 billion (in Australian dollars) in export value last year, according to data from the government's Bureau of Statistics released earlier this month."

It's not a carbon tax...it's just a tax...on carbon emissions.

Huffington Post (2/12/19) reports: "Ontario is considering having large industrial companies pay for pollution if they exceed emissions standards that will be established in the province — a system critics say is the same as the federal carbon tax the government has railed against for months. The Progressive Conservative government posted a proposal for the system on Ontario's Environmental Registry on Tuesday as part of its plan to fight climate change."

Energy Markets

WTI Crude Oil: ↑ $55.88
Natural Gas: ↑ $2.63
Gasoline: ↑ $2.32
Diesel: ↑ $2.93
Heating Oil: $201.34
Brent Crude Oil: ↑ $66.08
US Rig Count: ↑ 1086

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WESTERN WIRE

'Law Enforcement For Hire'

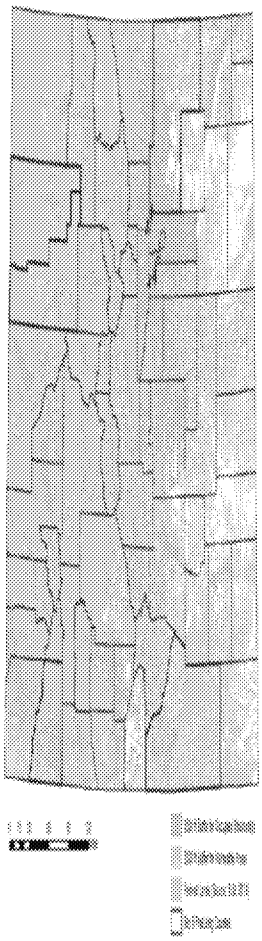
Climate Activism Hits State AG Offices: A new report from the Competitive Enterprise Institute's senior fellow Chris Horner shows that Democratic state attorney general offices in states across the country are applying for and receiving donor-sponsored legal fellows that promise to work on climate policy issues while embedded in the attorney general's staff. According to numerous emails and other documents revealed through Horner's open records request returns, the tranch of evidence "reveals an elaborate and years-long campaign by major left-leaning donors, green advocacy groups, and activist state AGs to politicize law enforcement in the service of the 'progressive' environmental policy agenda."

Big Green Backs Ban: A *Western Wire* review of social media and campaign finance documents shows that well-funded national green groups that back state and local fracking bans have been in the mix from the beginning, pushing for Initiative 97 in Colorado, a setback measure that will appear on November's ballot. On Wednesday, the Colorado Secretary of State confirmed that the 2,500-foot setback proposal would go before voters this fall, and Washington, D.C.-based Food & Water Watch and the Colorado affiliate of 350.org immediately signaled their organizational and ongoing financial support. If passed, more than 85 percent of the state's non-federal lands would be off-limits to new oil and gas development, a Colorado Oil and Gas Conservation Commission study found in July.

Sizing The Backlog: The Pew Charitable Trust has given more momentum to the bipartisan effort to bring much-needed revenue for deferred maintenance at the nation's more than 400 national parks and other monuments and historic sites, which current face a nearly $12 billion backlog in necessary repairs. A tool using federal data breaks down the park by park and state by state totals for transportation, roads, building restoration, water and wastewater management, and other needs, highlighting priorities and lending support to the 85 Democrats and Republicans who have sponsored legislation to create a Public Lands Legacy Restoration fund that taps revenues from energy development on federal lands, including oil, natural gas, coal, and renewable energy.

Here are *Western Wire*'s headlines from the week...

NEWS

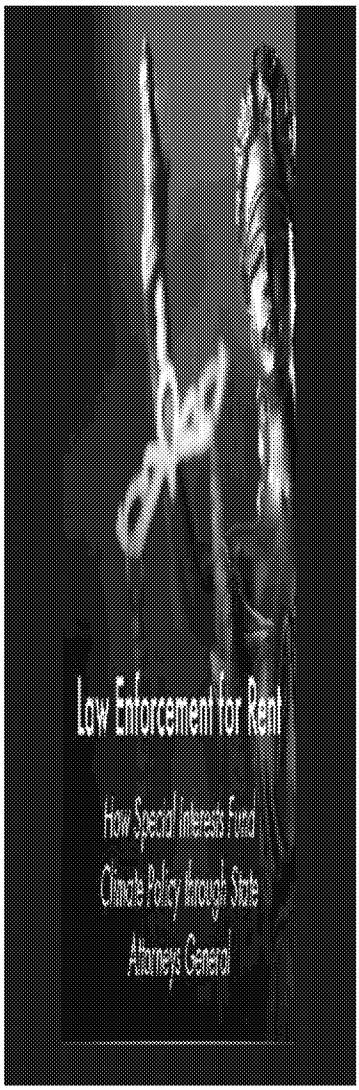


National Big Green Groups Race To Support Anti-Fracking Measure In Colorado

BY MICHAEL SANDOVAL AUGUST 29, 2018

A pair of well-funded, national anti-fossil fuel groups today rushed to announce they were ready to "get to work" passing Colorado's Initiative 97, a statewide 2,500-foot setback that will appear on November's ballot.

NEWS

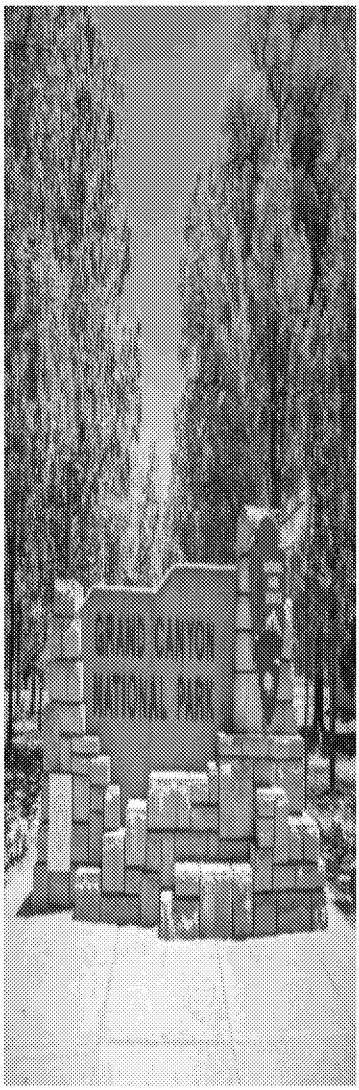


New Report Details Outsourcing Of Attorney General Services To Donor-Funded Fellowship Program Dedicated To "Progressive Legal Positions"

BY ELENA CONNOLLY AUGUST 31, 2018

Democratic state attorney general offices across the country have received legal fellows sponsored by a wealthy environmental foundation to work pro bono on climate policy issues as a member of the attorney general's staff, according to a new report.

NEWS

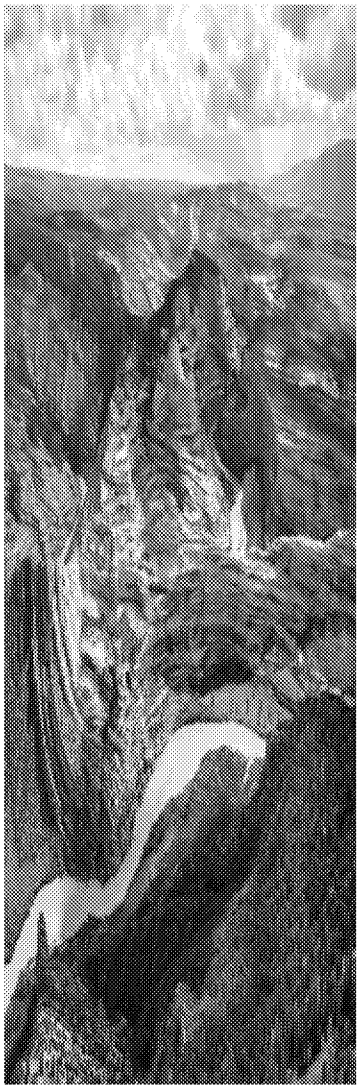


New Tool Breaks Down Billion Dollar National Park Service Maintenance Backlog

BY MICHAEL SANDOVAL AUGUST 31, 2018

As summer begins to fade into the upcoming Labor Day weekend, building support for fixing the nearly $12 billion in maintenance backlogs at the nation's prized national parks and historical sites could become a little easier, thanks to a new tracking tool that breaks down individual state and park repair needs using federal data.

NEWS



Congressional Hearing In Utah Highlights Energy's Role In Education

BY MICHAEL SANDOVAL AUGUST 30, 2018

A panel of Utah educators, county commissioners, and students argued for more regulatory certainty and for the recognition of the importance of revenues from the energy industry, and particularly oil and natural gas, to their education and state infrastructure at a field hearing on Wednesday.

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Currency isn't the only thing that is looney in Canada these days...

The Hill (12/13/18) opinion: "Earlier this month in Canada, the Albertan provincial government made a nearly unprecedented decision to mandate a cut in oil production on their producers in a desperate attempt to boost the extraordinarily low price of oil in the region. The last time this was tried was in 1980, but the move was to protest federal energy policies, not manipulate prices. Although it intends to help local producers, this measure ignores the root cause of the issue — a lack of pipeline infrastructure. To make matters worse, this measure could result in a slew of unintended consequences and will certainly hurt the Albertan oil business in the long-run... Observers in the United States should take note of the current situation in Canada. Environmental activists who want to keep-it-in-the-ground are pursuing a similar agenda when they attempt to block energy infrastructure or energy exports in the U.S. If

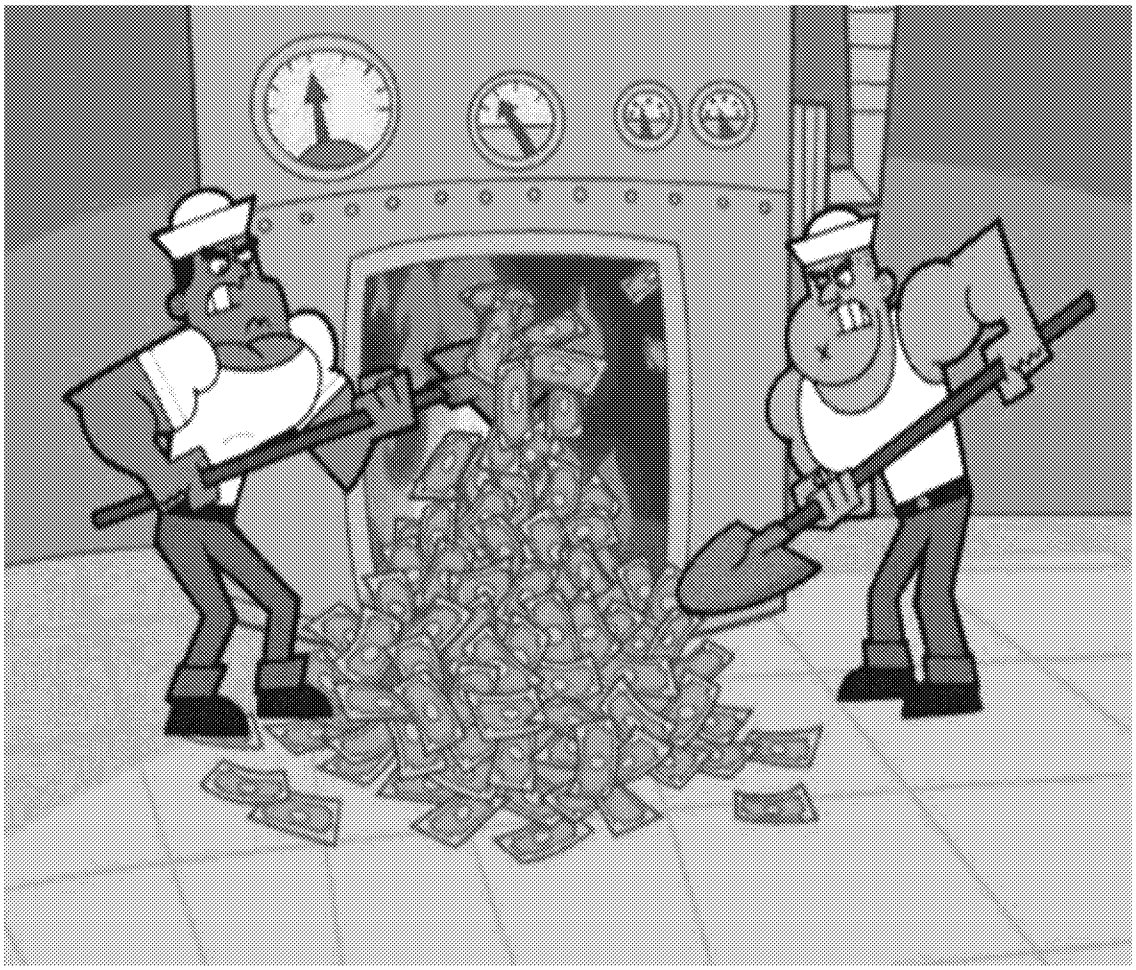
successful, we could find ourselves in a similar debate about how to "fix" low prices to deal with an excess supply of energy."

"Our experiment with auto-oriented development had already proven itself economically calamitous for the poor and destructive to our communities, even before we found ourselves in a climate crisis. It's time to end that experiment, starting with the artificially cheap gas that fuels it."

– Michael Sweeney, *Boston Globe*

As if we need more corruption in D.C.

InsideSources (12/13/18) reports: "Renewable energy portfolio standards are being adopted around the country as more and more areas 'go green.' Hidden in these proposals, however, are inescapable price increases. At the end of November, the Washington, D.C. city council voted on an ambitious clean energy proposal that would transition the city to 100 renewable energy by 2032. The legislation is full of goodies for the green industry, including promoting electric cars, raising building energy efficiency standards, and a 'Green Bank' to fund environmental programs. Funding for the Green Bank will come from increased taxes on gas and electricity bills. The Council says that D.C. residents can expect to pay about $2.10 more per month on their gas bill and around $1 dollar more on their electricity rates."



So what you're saying is the committee is irrelevant.

The Hill (12/13/18) reports: "A growing number of House Democrats are backing the idea to create a special committee to fight climate change next year, but it likely won't have the authority to pass any bills. Incoming House Speaker Nancy Pelosi told lawmakers Wednesday that the panel, championed by Rep.-elect Alexandria Ocasio-Cortez (D-N.Y.), won't have any legislative jurisdiction. In the meeting, meant to assuage concerns of incoming committee chairmen that the new climate panel might encroach on their authority, Pelosi (D-Calif.) promised that the select committee wouldn't have the authority to pass its own bills, according to Rep. Raul Grijalva (D-Ariz.), who attended the meeting."

Can you say federal building codes?

E&E News (12/13/18) reports: "Energy efficiency goals in the proposed 'Green New Deal' are 'reasonable,' representatives from the Department of Energy and other federal agencies told House lawmakers yesterday. The thumbs-up to the proposal, which Rep.-elect Alexandria Ocasio-Cortez (D-N.Y.) and other Democrats are pushing on Capitol Hill, came during an exchange with Rep. David McKinley (R-W.Va.) during a House Energy and Commerce Subcommittee on Energy hearing on public-private partnerships to boost

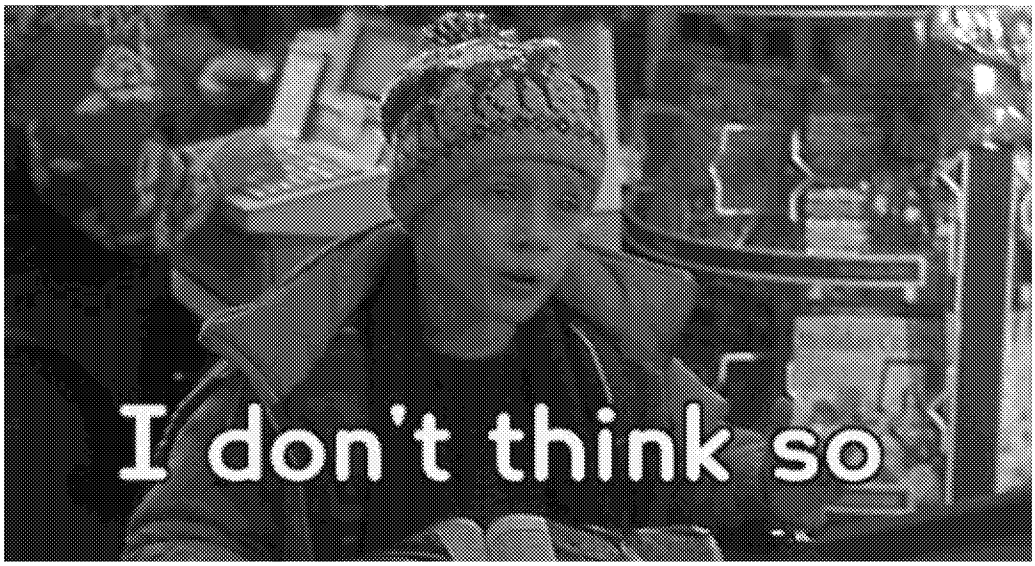
efficiency in federal facilities. McKinley asked if the idea of upgrading all buildings for 'state-of-the-art' efficiency in 10 years — a tenet of the 'Green New Deal' — was a reasonable target. Both Leslie Nicholls, strategic director of the Federal Energy Management Program at DOE, and General Services Administration Chief Sustainability Officer Kevin Kampschroer said yes."

Carbon tax is all pain and no gain.

Daily Caller (12/13/18) opinion: "Here's an analogy. As a homeowner, you suspect your roof may leak in bad weather. But you're not sure if there's really a leak, or how bad it may be. You do know that the weather forecast says a category 5 hurricane may hit in a week or so (and it may not), and that weather event could include tornados and lightning. You're understandably worried, so you call a roofer for a repair estimate. But when that estimate comes back, it's anywhere from $1,570 to $70,180. And the roofer warns you that if the worst-case scenario happens, your house will be flattened anyway, so the roof won't matter. With such big unknowns for the weather and no firm cost—or real guarantee—for the roof repair, no one would blame you for putting off the repair, until you were sure there's a leak in the first place. In the same way, we have no firm costs and no real guarantees with carbon taxes."

What "compromise" means here is for the U.S. to take expensive steps to cut pollution while the rest of the world does nothing.

AP News (12/12/18) reports: "The United Nations secretary-general called on countries to make compromises in tackling global warming, amid concern that the U.N. conference on the issue could end without a substantial agreement. In his second dramatic appeal at the talks in Poland in the space of 10 days, Antonio Guterres told ministers and senior diplomats from almost 200 countries they should consider the fate of future generations. 'This is the time for political compromises to be reached,' he said. 'This means sacrifices, but it will benefit us all collectively.'"



If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance

Myron Ebell, Competitive Enterprise Institute

Phil Kerpen, American Commitment

William O'Keefe, George C. Marshall Institute

Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity

Joe Bast, Heartland Institute

David Ridenour, National Center for Public Policy Research

Grover Norquist, Americans for Tax Reform
Sabrina Schaeffer, Independent Women's Forum
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Rich Collins, Positive Growth Alliance
Craig Richardson, E&E Legal
The Honorable George Allen, American Energy Freedom Center
Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↓ $52.40
Natural Gas: ↓ $3.92
Gasoline: $2.39
Diesel: $3.08
Heating Oil: ↓ $186.59
Brent Crude Oil: ↓ $61.14
US Rig Count: ↑ 1154

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Subject: Rocky Mountain High Noon

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In the Pipeline

MORNING ENERGY NEWS | 9.24.2018

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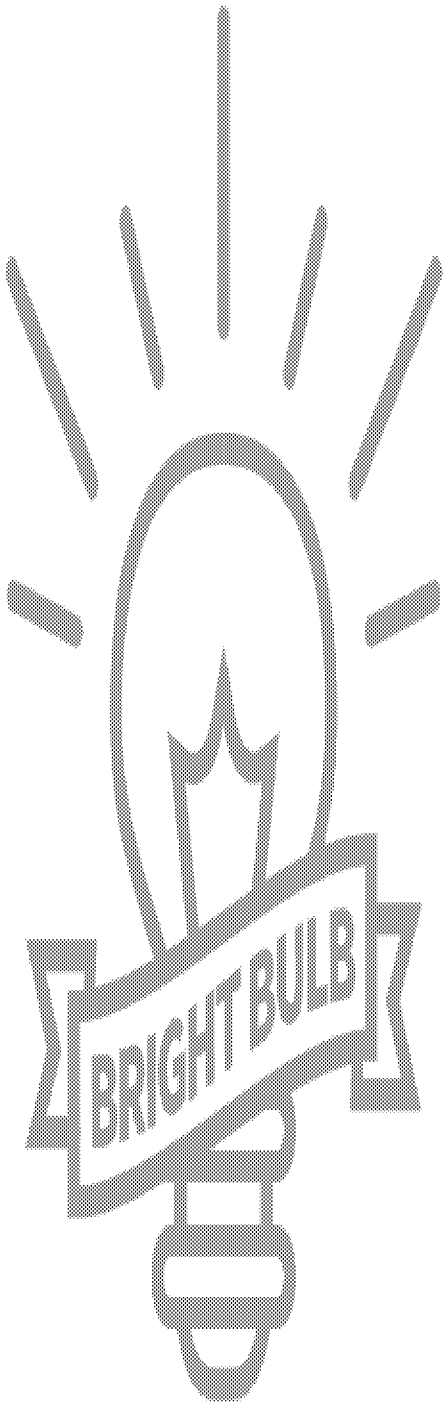
Don't shove me, Harv. I'm tired of being shoved.

Wall Street Journal (9/20/18) editorial: "Proposition 112 would restrict new energy development within a 2,500-foot radius of any building, playground, amphitheater, park, body of water or 'any other additional vulnerable areas designated by the state or local government.' The restrictions rule out 85% of all non-federal land in the state, according to the Colorado Oil & Gas Conservation Commission. In the five counties that produce 90% to 95% of Colorado's oil and gas, 94% of non-federal land would be off-limits. The implications of such a ban would be national. Colorado ranks fifth among the states in production of natural gas and seventh for oil."



"Eager to frivolously waste more taxpayer dollars, some legislators are now pushing to extend the electric vehicle tax credit and lift the cap on the number of vehicles that qualify for the credit by each manufacturer. Doing so would reward special interests and only benefit the wealthiest Americans. Congress should instead eliminate the subsidies for electric vehicles."

– Nicolas Loris and David Grogan, The Heritage Foundation

Riddle me this.

Forbes (9/17/18) column: "If the energy savings are so great, why do cost- and environmentally-conscious consumers need government bureaucrats to force them to purchase products that will save them money and reduce the global warming problem?...(E)lectric vehicles are only around one percent of total new cars sold today despite billions in manufacturing support, consumer subsidies of up to $10,000 per vehicle, state and local tax credits for consumers to install charging stations, and preferential treatment of electric cars (Hawaii allows electric vehicles to park cost-free at meters). Even this one percent of sales is an overstatement of consumer demand; despite all of these subsidies, manufacturers still lose money on every electric car they sell. It stands to reason that consumers would purchase even fewer electric cars if the prices reflected the full production costs."

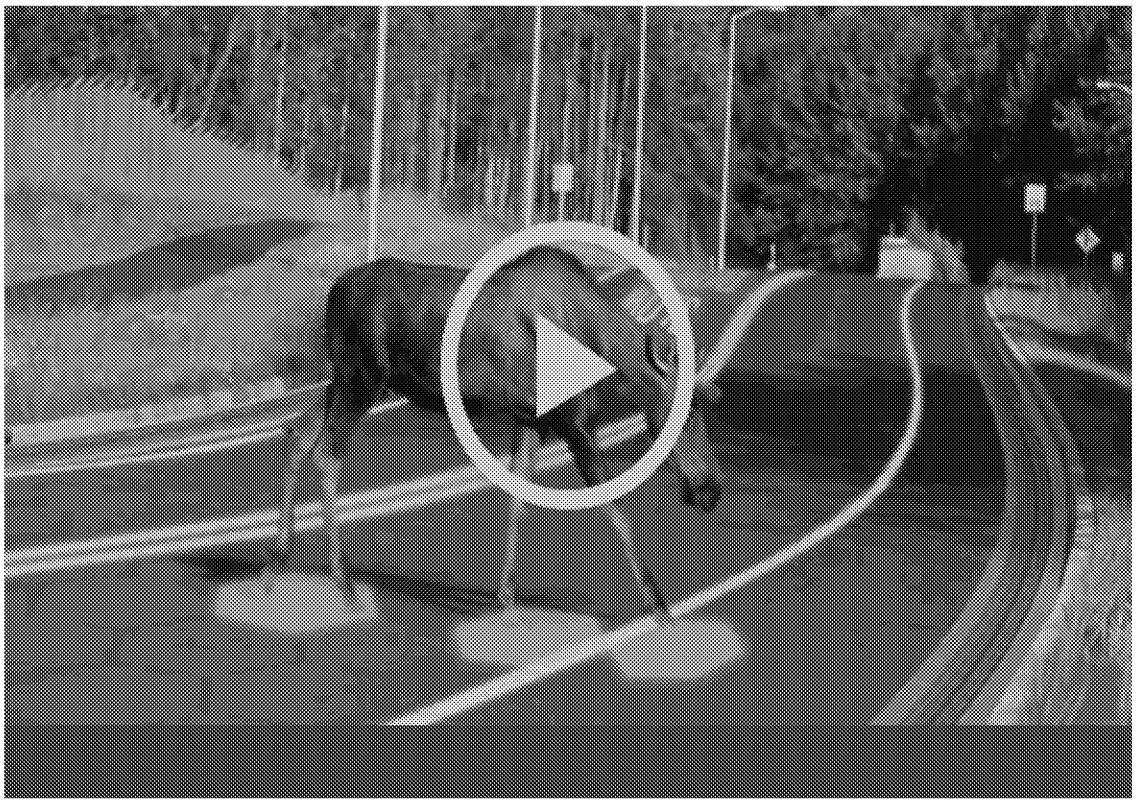
So essentially it's the Democratic Party platform.

Bloomberg (9/21/18) reports: "Chancellor Angela Merkel's plan to close Germany's remaining coal-fired power stations will drive up subsidies for regions that mine the commodity, according to a document from the economy and energy ministry seen by Bloomberg. Taxpayers are already slated to send 35 billion euros ($41 billion) of aid to four coal regions from 2013 to 2028 and will have to increase that amount as efforts to scale back pollution eliminates jobs at mines and power plants, the economy ministry estimated in a report drawn up last month."

So much for those solar freakin' roadways.

The Conversation (9/21/18) reports: "Four years ago a viral campaign wooed the world with a promise of fighting climate change and jump-starting the economy by replacing tarmac on the world's roads with solar panels. The bold idea has undergone some road testing since then. The first results from preliminary studies have recently come out, and they're a bit underwhelming. A solar panel lying under a road is at a number of disadvantages. As it's not at the optimum tilt angle, it's going to produce less power and it's going to be

more prone to shading, which is a problem as shade over just 5% of the surface of a panel can reduce power generation by 50%. The panels are also likely to be covered by dirt and dust, and would need far thicker glass than conventional panels to withstand the weight of traffic, which will further limit the light they absorb."



I'm gonna go with a firm never.

Edmonton Sun (9/20/18) column: "Clean Prosperity's calculations will reportedly show the amount of tax ordinary Canadians will pay beginning Jan. 1, 2019 will be less than the amount of rebates they receive back from Ottawa. That's nice. But that's based on Clean Prosperity's assumption that the average Ontario family will pay carbon taxes of about $165 next year when the tax rate is $20 per tonne (or about 4.5 cents per litre on gasoline). The average Alberta family will pay $249 and the average Saskatchewan family $259, because more of ours and Saskatchewan's electricity is supplied by coal. But that's just one study. Another study earlier this year by University of Calgary economist Jennifer Winter – using Statistics Canada figures on household energy consumption – calculated that the cost of Trudeau's carbon tax on the average Alberta family would be $1,111. The average Saskatchewan family would pay $1,032 and Ontario family $707. Clean Prosperity also arrives at its claim that most Canadians will benefit financially from Trudeau's cash grab by assuming the federal government will rebate most of what it collects directly back to taxpayers. When has any government ever returned most of what it collected to taxpayers?"

Energy Markets

WTI Crude Oil: ↑ $71.93

Natural Gas: ↑ $2.98

Gasoline: $2.85

Diesel: ↓ $3.18

Heating Oil: ↑ $226.95

Brent Crude Oil: ↑ $80.56

US Rig Count: ↑ 1142

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In the Pipeline

MORNING ENERGY NEWS | 9.7.2018

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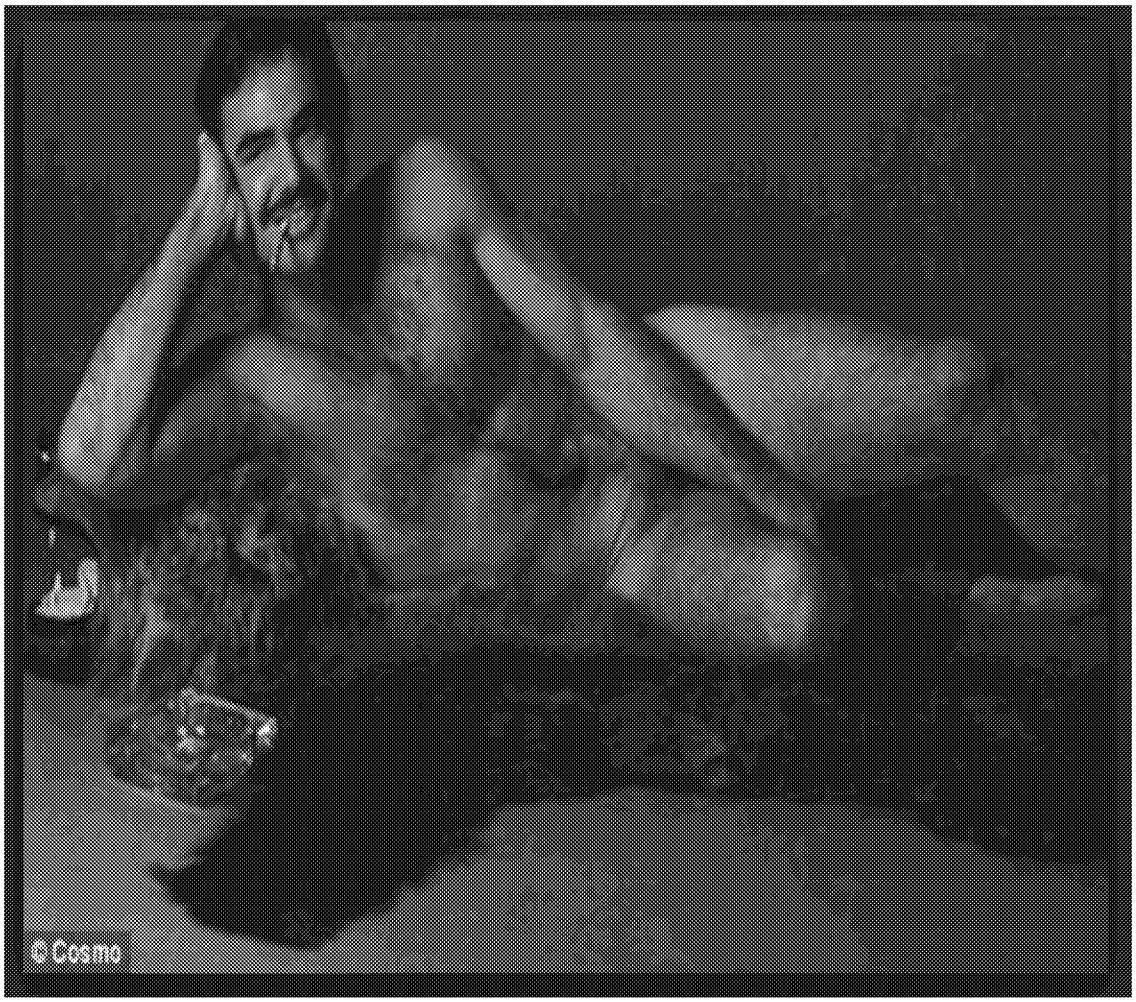
The bearskin rug sits empty in your honor, sir.

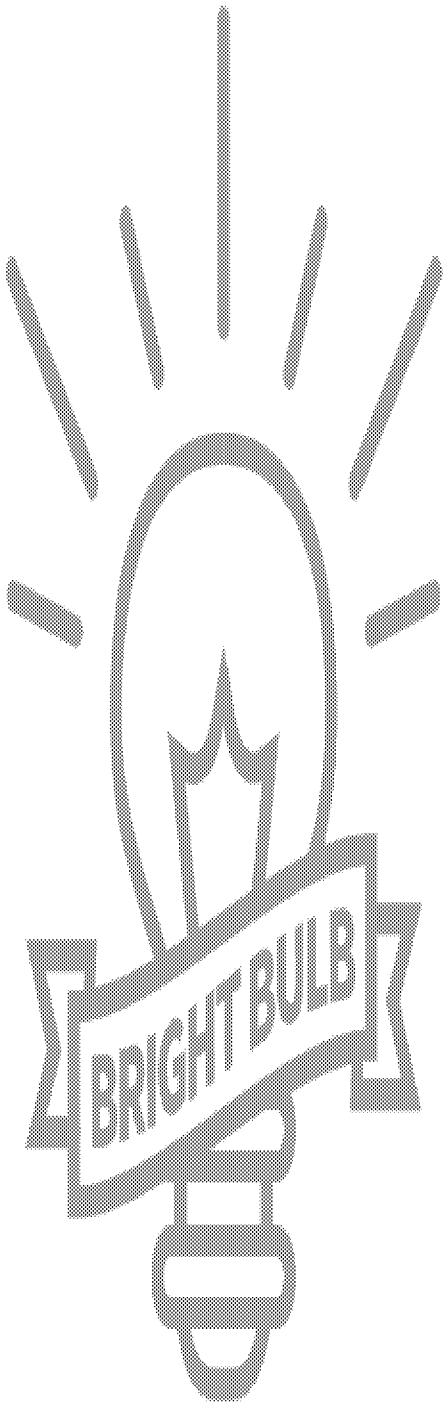
New York Times (9/6/18) reports: "Burt Reynolds, the wryly appealing Hollywood heartthrob who carried on a long love affair with moviegoers even though his performances were often more memorable than the films that contained them, died on Thursday in Jupiter, Fla. He was 82."



Ain't no party like a carbon tax party.

E&E News (9/6/18) reports: "Shell Oil Co. has convened regular meetings since early 2016 with key environmental groups and think tanks to build support for a nationwide carbon tax, according to sources. The company initiated meetings

during the heart of the presidential race, in part because it was believed that greenhouse gas regulations would be strengthened if Democrat Hillary Clinton won the election. The meetings continued after President Trump's victory, and company officials have hosted talks in Shell's offices in Washington, D.C.; at restaurants; on conference calls; and over email...Tom Pyle, who led Trump's transition team for the Department of Energy and is now president of the American Energy Alliance, said he hadn't heard of the carbon tax meetings. 'I have not been invited to that party,' said Pyle, a vocal opponent of carbon taxes, 'which makes sense, given where I am on that issue.'"



"While the corn ethanol industry promised that decades of subsidies (tax credits, farm bill bioenergy subsidies, ethanol blender pump subsidies, etc.) would lead to better biofuels, corn ethanol has instead proven to be an expensive bridge to nowhere."

– Ryan Alexander, Taxpayers for Common Sense

No grandstanding here. Check out IER's podcast on what Brett Kavanaugh would bring to the Supreme Court.

Institute for Energy Research (7/17/18) reports: "While the Senate confirmation hearings are underway for Brett Kavanaugh, IER's policy team explores questions on what a Justice Kavanaugh would mean for energy in America."

There they go again.

Watts Up With That (9/6/18) column: "What Al Gore called 'the central organizing principle of civilization' marches on. Premised on population, affluence, and technology (PAT) as the scourge of the natural environment, anti-industrial activists effortlessly jump from alleged market failure to recommended government correction, program by new program. What is the

latest public policy push regarding global warming? According to scientist/activist James Hansen, the time has come to construct new-technology industrial plants to generate 'negative' carbon emissions to 'stabilize' global climate. Versus carbon-dioxide tax proposals around $40 per metric ton, this new program would cost between $150 and $200 per metric ton."

Almost makes me sympathize with the "Occupy" bunch.

Financial Times (9/6/18) reports: "A select group of specialist traders at hedge funds and investment banks, including Morgan Stanley and Goldman Sachs, are churning bumper profits from a once niche commodity that has risen phoenix-like from a decade-long slump. Carbon credits, introduced by the EU to curb pollution by companies in the trading bloc, have soared almost fourfold in the past year to above €20 per tonne of CO2, following legislative changes designed to get the scheme working."

"I'm from the government and I'm here to help."

NPR (8/31/18) feature: "In 1976, Jimmy Carter made a campaign promise: I'm giving dairy farmers a break. And after he won, he set out to raise the price of milk. But the government couldn't just buy milk. They had to buy something storable that used a lot of milk. So the government started buying up as much cheese as people wanted to sell at the new price...Today on the show, how a well-intentioned program to help out farmers turned into a slow-moving economic trainwreck...and some pretty tasty cheese."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance
Myron Ebell, Competitive Enterprise Institute
Phil Kerpen, American Commitment
William O'Keefe, George C. Marshall Institute
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Joe Bast, Heartland Institute
David Ridenour, National Center for Public Policy Research

Grover Norquist, Americans for Tax Reform
Sabrina Schaeffer, Independent Women's Forum
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Rich Collins, Positive Growth Alliance
Craig Richardson, E&E Legal
The Honorable George Allen, American Energy Freedom Center
Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $67.90

Natural Gas: ↓ $2.77

Gasoline: $2.85

Diesel: $3.18

Heating Oil: ↑ $221.05

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US Rig Count: ↓ 1153

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Subject: Sep 10 PRG Energy Update: CA Climate Party

Friends,

L'Shana Tovah to all… Last night at Sundown began the Jewish New Year – *Rosh Hashanah*, literally meaning the "beginning the year." It is the first of the Jewish High Holy Days which culminates next Wednesday with *Yom Kippur*. I'm thinking about tomorrow too as it has been 17 years since the terror attacks on 9/11 in NYC and DC.

Maybe a New Year or Day of Atonement is an appropriate transition to the Saturday Women's US Open final. I am a big fan of Serena and think she and Venus have done fabulous things for tennis. While I agree with her that the umpire was wrong and will likely never get another important match (I have some experience in officiating as you all know), I still have problems with her meltdown which has completely overshadowed the first ever grand slam win by Japan's Naomi Osaka, who by the way has a great story. My take: She is definitely a role model and should have swallowed the umpire's terrible call on the coaching warning and tried to overcome it. After Serena let down her mental game – impacted by a bad umpiring decision – Osaka, who had the upper hand in the match, taking the first set 6-2, finished her off. Lots of columns and opinions on this in the media from great sports reporters like Christine Brennan and Sally Jenkins, but bottom line for me is, the umpire was terrible, you have to deal with it. BTW, Novak Djokovic blasted past Juan Martin del Potro for a straight set win 6-3, 7-6, 6-3 on Sunday for the Men's title that was much less controversial.

Before we look at this week, just a word about Sunday's *Washington Post* article about EPA staff leaving in droves. First, my friends Brady Dennis and Juliet Eilperin wrote a very good story, but I am shocked it made it to the front page/above-the-fold Sunday. As one who has watched EPA for many years, it seems likely that this EPA staff would be expected to leave as they are. In other words, it should not surprise anyone. The staff at EPA has be experienced and aging for some time and we expected this type of exodus. Many thought it would happen sooner, but perhaps the Obama EPA's second-term aggressiveness on environmental policy may have kept some there a little longer. I'm sure it is also partly ideological: certainly is not surprising to think that some of the EPA retirements are driven by the Trump approach. Finally, the Trump team all along has said they were going to reduce staff at EPA. In fact some have wanted to reduce it much more that 8%. The fact that it is only down by about 1,000 employees is not really that much given the on-going planning/reorganizing. We have great experts on this, so happy to discuss.

Light schedule this week as Congress looks for the exits for the Midterm elections on tap and the Jewish holidays. On Wednesday, the votes begin on the budget. Majority Leader McCarthy told the media the House will vote on the final first minibus which contains Energy and Water budgets. Both chambers will only be in town for a few days, with the House and Senate out until Wednesday for Rosh Hashanah. POLITICO adds the schedule leaves just seven working days when both chambers are in session before the Sept. 30 funding deadline. More budget mini-buses in the coming days…

Also today, in a special edition episode of our great Bracewell Podcast, *The Lobby Shop*, Scott Segal tackles the EPA's proposed Affordable Clean Energy (ACE) Rule with Chamber Global Energy Institute head Karen Harbert and former EPA Air office head Jeff Holmstead. Check out the details here.

The biggest story this week is out in the Golden State where Gov. Jerry Brown is hosting big climate summit. Beyond the summit, there are a ton of political and policy events running sidebar including one from our friends at C2ES and many more. Speakers include Al Gore, Michael Bloomberg and many more. I have discussed this with some of you already and I am happy to do more should you need comment, historical perspective and climate policy background.

Finally, sad news to lose our friend Sam Bodman who served as Energy Secretary during the Bush Administration, who passed away over the weekend at 79. *Hurricane Florence* is growing and is expected to potentially hit the North/South Carolina coast on Thursday or Friday. We'll will keep an eye on it and stay safe. Call with questions. Best,

Frank Maisano
(202) 828-5864
c. (202) 997-5932

FRANKLY SPOKEN

"Sam had a brilliant mind, and we are fortunate that he put his intellect to work for our country as Secretary of Energy. I am proud that he was a member of my Cabinet, and I am proud that he was my friend."

Former President George Bush and former first lady Laura Bush mourned the loss of former Energy Secretary Sam Bodman in a statement marking his passing on Saturday.

ON THE POD

Bracewell, Chamber Energy Experts Discuss ACE Rule – In a special edition episode of *The Lobby Shop*, Bracewell PRG Co-Head Scott Segal takes the reigns with an interview of President and CEO of the U.S. Chamber of Commerce's Global Energy Institute, Karen Harbert, and former Assistant Administrator of the EPA for Air and Radiation, Jeff Holmstead. Karen, Scott, and Jeff discuss the EPA's proposed Affordable Clean Energy (ACE) Rule, how it compares to the Clean Power Plan, and more.

FUN OPINIONS

Wash Times Has Special Section on RFS Reform – *The Washington Times* had a special section last week which detail need for renewable fuel standard (RFS) reform. Among the writing on the issue were key comments from Senators who raised concerns about the current RFS and why it needs to be fixed. Sen. Dianne Feinstein (D-CA) said the federal mandate for corn ethanol is "both unwise and unworkable" adding roughly 40% of corn in the United States is currently used for fuel, which increases the price of food and animal feed while also damaging the environment. Additionally, oil companies are unable to blend more corn ethanol into gasoline without causing problems for some gas stations and older automobiles. Feinstein: "Once we remove the corn ethanol mandate, the RFS program can finally serve its intended purpose: to support the development of advanced, environmentally friendly biofuels like biodiesel, cellulosic ethanol and other revolutionary fuels." Sen. Bill Cassidy (R-LA) added that the RFS is outdated, created when energy consumption relied heavily on foreign imports. Cassidy: "It was thought that the Renewable Fuel Standard would be good for our environment by decreasing the carbon footprint. But in the last 10 years, our energy landscape has changed dramatically. We now have more domestic oil than almost ever before, and the drawbacks of the RFS greatly outweigh its benefits." Finally, Sen. Tom Udall (D-NM) said while a well-intentioned idea, the "promised environmental benefits of the RFS have yet to be realized" and in fact, "may well be hurting" the environment. Udall says we need a forward-looking plan that offers "visionary reforms to put us on a cleaner and more sustainable path. The changes represent a giant step forward to combat the urgent threat of climate change, cut pollution, and protect our planet for future generations." There is much more from Congress on the need for reform HERE.

IN THE NEWS

MIT Tool Helps Building Planning Reduce Climate Emissions – A new software tool from researchers at MIT was rolled out last week to help architects or engineers design a new building to better reduce climate emissions. Often, it's done only at the end of the process — if ever — that a lifecycle analysis of the building's environmental impact is carried out. And by then, it may be too late to make significant changes. Now, a faster and easier system for doing such analyses could change all that, making the analysis an integral part of the design process from the beginning. The new process, described in the journal *Building and Environment* in a paper by MIT researchers Jeremy Gregory, Franz-Josef Ulm and Randolph Kirchain, and recent graduate Joshua Hester PhD '18, is simple enough that it could be integrated into the software already used by building designers so that it becomes a seamless addition to their design process. Lifecycle analysis, known as LCA, is a process of examining all the materials; design elements; location and orientation; heating, cooling, and other energy systems; and expected ultimate disposal of a building, in terms of costs, environmental

impacts, or both. Ulm, a professor of civil and environmental engineering and director of MIT's Concrete Sustainability Hub (CSH), says that typically LCA is applied "only when a building is fully designed, so it is rather a post-mortem tool but not an actual design tool." That's what the team set out to correct with this new tool. To the researchers' surprise, they found use of their LCA system had very little impact on reducing the range of design choices. "That's the most remarkable result," Ulm says. When introducing the LCA into the early stages of the design process, "you barely touch the design flexibility," he says.

Senator Unveil Advance Nuke Blueprint – A bipartisan group of senators led by Energy and Natural Resources Chairman Lisa Murkowski (R-Alaska) and Sen. Cory Booker (D-N.J.) have introduced the Nuclear Energy Leadership Act (NELA), a comprehensive blueprint for the U.S. to once again lead the world in next-generation nuclear power. The bill (S. 3422) would direct the Department of Energy to establish specific goals to align the federal government, national labs and private sector in efforts to accelerate advanced nuclear technologies. The language echoes the Advanced Nuclear Energy Technologies Act (S. 1457) from Sen. Jeff Flake (R-Ariz.) and Booker, which the Senate energy panel approved in March. It would also require DOE's Office of Nuclear Energy to develop a 10-year strategic plan that supports advanced nuclear R&D goals. NELA addresses the lack of domestic supply of high-assay low-enriched uranium (HA-LEU), which will be needed to fuel most advanced reactors being designed. NELA establishes a program to provide a minimum amount of HA-LEU to U.S. advanced reactor developers from DOE stockpiles until a new long-term supply is developed. NELA also initiates a long-term power purchase agreement pilot between the DOE and utilities to procure nuclear power and reauthorizes nuclear engineering scholarships to maintain a robust pipeline of nuclear engineering talent.

EIA Report Says CO2 Emissions Continue to Drop – Newly released Energy Information Administration data shows that U.S. CO2 emissions from energy dropped by roughly 1% last year. U.S. energy-related CO2 emissions have declined in 7 of the past 10 years, and they are now 14% lower than in 2005. Last year, emissions from electricity production fell by 4.6%. The shift toward natural gas from coal lowers CO2 emissions because natural gas produces fewer emissions per unit of energy consumed than coal and because natural gas generators typically use less energy than coal plants to generate each kilowatthour of electricity. Electricity generation from renewable energy technologies has increased; these technologies do not directly emit CO2 as part of their electricity generation. In EIA's emissions data series, emissions from biomass combustion are excluded from reported energy-related emissions according to international convention.

DOE Announces Advanced Vehicle Research – The Department of Energy said the selection of 42 projects totaling $80 million to support advanced vehicle technologies that can enable more affordable mobility, strengthen domestic energy security, reduce our dependence on foreign sources of critical materials, and enhance U.S. economic growth. This work supports DOE's goal to invest in early-stage research of transportation technologies that can give families and businesses greater choice in how they meet their mobility needs.

ON THE SCHEDULE THIS WEEK

WAPA, DTF Forum to Highlight Diesel Issues –Today at 11:30 a.m. at Engine Co 12 in NW DC, the Washington Automotive Press Association and the Diesel Technology Forum held a lunch to look at the true 'state of diesel' in the U.S. automotive market. Speakers include GM's Global Diesel Executive Director, Pierpaolo Antonioli and GM's Regional Chief, Engineer, Mike Siegrist. You will also hear the very latest IHS Markit diesel vehicles-in-use data for the United States; and get details about new research on the benefits of new-technology diesel pickup trucks.

Interior Official Addresses ESA at Heritage Forum – Deputy Interior Secretary David Bernhardt will address a forum at The Heritage Foundation today at Noon to discuss the department's proposed changes to the Endangered Species Act

JHU to Feature Rockefeller Foundation President – The Johns Hopkins University SAIS and the Initiative for Sustainable Energy Policy (ISEP) host a forum next Monday at 12:30 pm in its Kenney Herter Auditorium featuring Dean Vali Nasr and a conversation on affordable and clean energy with the President of the Rockefeller Foundation, Rajiv Shah.

Field Hearing to Look at Salmon Runs, River Policy – The House Natural Resources Oversight Subcommittee holds a field hearing today at 1:00 p.m. in Pasco, Wash focused on the federal Columbia River power system. The hearing will review

a dispute that played out in Congress in the minibus that impacts salmon runs in the Columbia and Snake Rivers in Washington State. Officials from the Bonneville Power Administration, Washington Association of Wheat Growers and Nez Perce Tribe will testify.

SF CLIMATE EVENTS Tomorrow:

- PRI: https://www.unpri.org/events/pri-academic-network-conference-2018/2835.article
- C2ES: https://www.eventbrite.com/e/mayors-and-business-advancing-climate-action-tickets-48701062188
- Land-Energy Nexus: https://globalclimateactionsummit.org/events/the-land-energy-nexus-in-climate-change-mitigation/
- Defenders of Wildlife: https://www.eventbrite.com/e/panel-event-developing-large-scale-renewable-energy-responsibly-tickets-48487265717
- The Diesel Technology Forum webinar: https://www.dieselforum.org/webinar/carbon-cutting-industrial-size
- Wilson Center w/Gina McCarthy: https://www.wilsoncenter.org/event/global-climate-action-summit-women-policy-leaders-driving-change-global-climate-policy
- NPR/Climate One w Gina McCarthy: https://climateone.org/events/lets-talk-solutions-global-climate-action-summit

Forum to Look at Southern Gas Corridor – The Atlantic Council's Global Energy Center hosts a conversation about the Southern Gas Corridor and European energy security tomorrow at 11:00 a.m. In the wake of new developments in constructing and completing the Southern Gas Corridor, a key priority project for European energy security, our expert panel will discuss the progress already made, challenges still ahead, and opportunities for the future.

Forum to Look at Smart Cities in Latin America – The Inter-American Dialogue holds a discussion tomorrow on smart cities in Latin America.

Methanol Forum Set – Argus hosts its Methanol Forum Wednesday and Thursday in Houston at the Westin, Memorial City. Issues include trends in the methanol industry, the potential impact from crude and natural gas markets, regional perspectives, including in-depth analysis of China and the emerging Indian market and the outlook for methanol derivatives including biodiesel and olefins. Our friend Greg Dolan, CEO of the Methanol Institute is among the speakers.

BioEnergy Conference Set – The Mid-Atlantic Bioenergy Council (MABEC) holds a conference and expo at CityView in Philadelphia Wednesday through Friday.

Coal Council Meets in Norfolk – On Wednesday and Thursday, the National Coal Council meets in Norfolk for its Fall meeting to discuss coal-related issues. Lou Hrkman of DOE will speak.

Climate Summit Set for SF – The Global Climate Action Summit will be held in San Francisco on Wednesday through Friday. The forum will bring leaders and people together from around the world to support action on climate change. It will also feature action by states, regions, cities, companies, investors and citizens with respect to climate action. It will also be a launchpad for deeper worldwide commitments and accelerated action from countries—supported by all sectors of society—that can put the globe on track to prevent dangerous climate change and realize the historic Paris Agreement. States and regions, cities, businesses and investors are leading the charge on pushing down global emissions by 2020, setting the stage to reach net zero emissions by midcentury. Speakers include Gov. Jerry Brown, UNFCCC head Patricia Espinosa, Michael Bloomberg, Marshall Islands President Hilda Heine, Canadian Minister of Environment Catherine McKenna, musician Dave Matthews, LA Mayor Eric Garcetti, Alec Baldwin, Jane Goodall, Andrea Mitchell, Houston Mayor Sylvester Turner, former U.S. Vice President Al Gore and former U.S. Secretary of State John Kerry.

SF Wednesday/Thursday/Friday Events:

- Paris Mayor: https://www.c40.org/events/cities4climate-the-future-is-us
- Atlantic Council: http://www.atlanticcouncil.org/events/upcoming-events/detail/california-stories-grounded-perspectives-on-climate-policies-and-actions

- Harvard School of Public Health: https://www.hsph.harvard.edu/c-change/2018/08/12/childrens-health-the-measure-of-success-when-addressing-climate-solutions-a-discussion-of-what-we-know-what-we-dont-know-what-we-need-to-know/
- C2ES Meeting Paris: https://www.eventbrite.com/e/meeting-the-paris-goal-strategies-for-carbon-neutrality-tickets-48699807435
- Oil/Autos: https://www.eventbrite.com/e/oil-autos-transition-planning-for-a-low-carbon-future-tickets-48741670649
- Stanford Woods Institute: https://woods.stanford.edu/news-events/event/2009-epa-endangerment-finding-even-stronger-evidence-2018
- ELI: https://www.eli.org/events/breaking-news-uncertain-future-californias-vehicle-emission-standards

WCEE to Host Forum to Highlight Women in Energy Stories – Wednesday at 6:00 p.m., the Women's Council on Energy and the Environment's (WCEE) Career Building Section hosts a reception and discussion at USEA about challenges and opportunities for women working in energy. Our friends Vicky Bailey and Sheila Slocum Hollis will share their expertise on overcoming obstacles, discuss skills required for convening stakeholders, and bring examples of leading towards practical solutions for the real world.

Forum to Look at AVs – Axios hosts a conversation on Thursday at 8:00 a.m. at the Long View Gallery looking at how autonomous vehicles and transportation technology will impact the future. Speakers will include Ohio Rep. Bob Latta, Global Automakers CEO John Bozzella and SAE International CEO David Schutt.

Senate Enviro Looks at Advanced Nuclear – Following last week's introduction of bipartisan energy legislation, the Senate Environment Committee holds a hearing Thursday at 10:00 a.m. on advanced nuclear technology. The hearing will look closely at safety and associated benefits of licensing accident tolerant fuels for commercial nuclear reactors.

House Science Panel Look at EPA Glider Truck Rule – The House Science Committee's Environment and Oversight Subcommittees hold a joint hearing on Thursday examining the underlying science and impacts of glider truck regulations. Witnesses include regulation, risk, economics expert Richard Belzer and Owner-Operator Independent Drivers Association President Todd Spencer.

Senate Energy to Look at European LNG – The Senate Energy Committee holds a hearing on Thursday at 10:00 a.m. to examine the role of U.S. LNG in meeting European energy demand.

House Oversight to Look at Disaster Response –The House Oversight Committee holds a hearing on Thursday at 1:00 p.m. evaluating Federal disaster response and recovery efforts. FEMA Administrator Brock Long Army Corps of Engineers Scott Spellman and Lynn Goldman of the Milken Institute will testify.

***Post* to Host Space Forum** – On Friday at 9:00 a.m., *The Washington Post* along with American Institute of Aeronautics and Astronautics (AIAA) and the Association of Space Explorers (ASE) will bring together key government officials, renowned scientists and leaders in the field of space exploration for a program examining the many factors shaping American leadership in space, the new "space race," the future of space tourism and exploration that could lead to a future beyond Earth. Speakers include VP Mike Pence, NASA head Jim Bridenstine, Bill Nye and many more including current and former astronauts.

ABA to Host SCOTUS Enviro Event – Friday at Noon, the ABA's Section of Environment, Energy, and Resources, and the Section's Constitutional Law Committee will hold an in-depth review of recent U.S. Supreme Court decisions effecting environmental issues. Panelists will also review Judge Kavanaugh's environmental jurisprudence and his potential impact on the Supreme Court.

Electric Cars on Display on National Mall – National Drive Electric Week launches in Washington on Sunday with events from 10:00 am - 3:00 pm on the National Mall near National Gallery of Art (7th Street, NW). At the event, you will learn about electric vehicles and see the latest models on the National Mall.

IN THE FUTURE

Forum to Look at Carbon Tax – Next Monday, September 17th at 1:30 p.m. in the U.S. Capitol Visitors Center, Plant Oil Powered Diesel, Inc. is hosting a panel discussion on the carbon tax, featuring industry, environmentalist and citizen views. More on the panelists as we get closer next week.

CSIS Hosts Trade Reps – On Monday September 17th, the CSIS Scholl Chair in International Business is hosting a conversation with six former United States Trade Representatives, who will share wisdom from their own experience and discuss the current global trading system, its institutions, and the prospects for trade in these challenging times. Speakers include Bill Brock, Carla Hills, Micky Kantor, Charlene Barshefsky, Susan Schwab and Ron Kirk.

Webinar to Look at Smart Grid Changes – The National Journal hosts a webinar on the changes in the U.S. energy grid on September 20th at 11:00 a.m. From changing energy sources and technological advances to government regulations, this webinar will look at what implications could smart grid technology have for government, regulation, and public policy. National Journal Presentation Center analysts Julianna Bradley, Sean Lambert, and Taryn MacKinney, as well as National Journal Energy Correspondent Brian Dabbs, will speak at this in-depth look at the issues surrounding the state of the U.S. energy grid.

Offshore Wind Forum Set for Norfolk – The 2018 Virginia Offshore Wind Executive Summit will be held on Friday September 21st in Norfolk at the Hilton Main. The event brings together the supply-chain business community with federal and state government officials to accelerate Virginia's inclusion of large-scale offshore wind within the state's energy mix. VA Governor Ralph Northam and Orsted North American President Thomas Brostrom, Dominion Energy, Siemens –Gamesa, US Bureau of Ocean Energy and Management and many others will discuss port infrastructure, supply chain procurement and market opportunities.

CAFE Public Hearing Set for CA, MI, PA – NHTSA and EPA will hold three public hearings on the revisions to the fuels economy standard. The hearing will occur on Sept 25th in Fresno, Sept 26th in Dearborn MI, and Sept 27th in Pittsburgh.

Border Energy Forum Set for San Antonio – The North American Development Bank (NADB) will host the XXIII Border Energy Forum in San Antonio on September 26th and 27th at the Hilton San Antonio. This forum brings together local and state officials, private sector developers, academics, large commercial users, and energy experts from the U.S. and Mexico. NADB's unique position as the only U.S.-Mexico binational development bank, has provided the Bank the opportunity to be involved in some of the most relevant clean energy projects developed in the last five years in the region. NADB has financed close to $1.5 billion for 35 projects with total costs of $5.2 billion. Roughly, 2,548 MW of new generation capacity is being installed along the border. The forum will center the dialogue on energy prosperity, innovation, financing, the future of energy markets, and crossborder opportunities along the U.S.-Mexico border, and how to continue building partnerships to advance both countries energy goals that ultimately improve economic development and protect the environment.

EPA to Host ACE Hearing in Chicago – The EPA will host a single public hearing on its proposed replacement for the Clean Power Plan in Chicago on Monday October 1st at the Ralph H. Metcalfe Federal Building. The building is the home of EPA's Region 5 headquarters.

SEJ in Flint – The Society of Environmental Journalism holds its annual conference on October 3-6th in Flint. Of course, Bracewell hosts its annual event on Thursday October 4th.

Shale Insight Set For Pittsburgh – Shale Insight 2018 is set for Pittsburgh on October 23-25. The Marcellus Shale Coalition (MSC) hosts the event along with the Ohio and West Virginia Oil & Natgas Assns. SHALE INSIGHT™ offers insightful pre-conference workshops, technical and public affairs sessions, national keynote addresses, and high-powered networking sessions will provide attendees, sponsors, and exhibitors unprecedented access to the industry's most influential leaders and innovators. You can see the agenda HERE.

FRANK MAISANO
Senior Principal
Ext. 5864
Policy Resolution Group

Message

From: Tom Pyle [info=americanenergyalliance.org@mail133.suw14.mcdlv.net]
on behalf of Tom Pyle [info@americanenergyalliance.org]
Sent: 8/22/2018 1:53:35 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Mopping up the mess at EPA.

View this email in your browser

In the Pipeline

MORNING ENERGY NEWS | 8.22.2018

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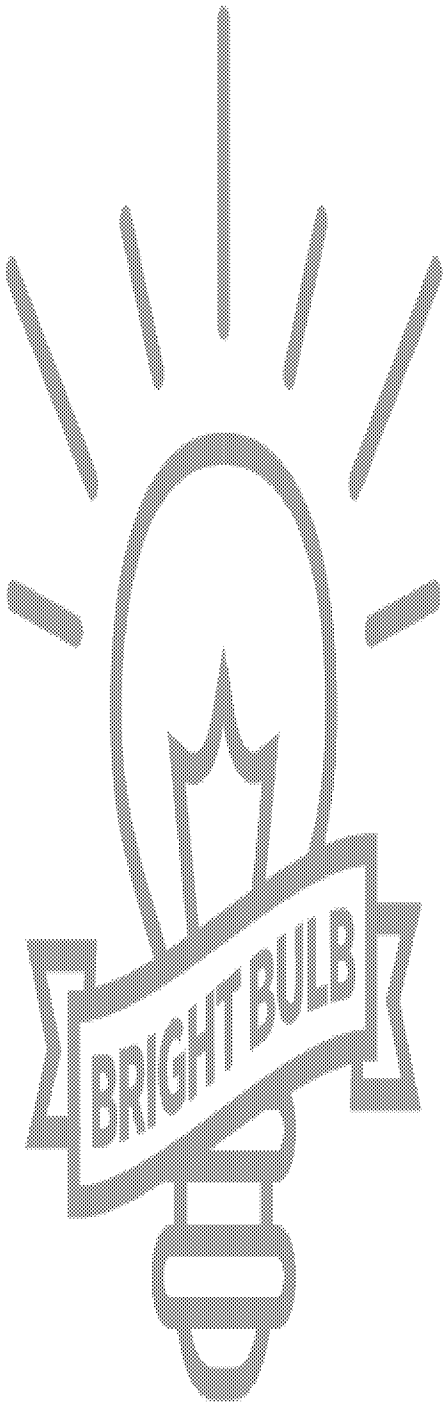
At this point, we'll take it.

Ars Technica (8/21/18) reports: "On Tuesday, the Trump administration proposed a replacement rule for former President Obama's Clean Power Plan, and its details favor coal power plant owners.On Monday night, Environmental Protection Agency (EPA) Deputy Administrator Andrew Wheeler signed a proposed rule, called the 'Affordable Clean Energy Rule,' which would direct states to inventory their power plants and come up with a plan to regulate the greenhouse gas emissions of individual plants. By contrast, the Obama administration's Clean Power Plan established targets for emissions across each state's energy sector, a move that would have incentivized the industry to leave behind the highest-carbon-emitting power sources, like coal."

Daily Caller (8/21/18) reports: "Acting EPA Administrator Andrew Wheeler proposed Tuesday the Affordable Clean Energy (ACE) Plan, a more lenient regulatory scheme to cut carbon dioxide emissions from existing power plants. 'Between ACE, the recently proposed rollback of the Obama fuel economy standards known as CAFE, and the US pullout from the Paris climate agreement, the Obama climate legacy has been erased by President Trump,' Trump transition team member Steve Milloy told The Daily Caller News Foundation. EPA's new regulatory framework would focus on improving heat-rate efficiency at individual coal-fired power plants, making it easier for plants to upgrade their equipment and give states more authority over regulating emissions. 'Although ACE is not a total rollback of the Obama climate rules, that's okay for now as it constitutes practical rollback of them,' said Milloy, who runs the website JunkScience.com."



"The so-called 'conservative' case for a carbon tax has always been a shell game."

– Oren Cass, Manhattan Institute

Can we have your word on this?

Think Progress (8/21/18) blog: "These [production] tax credits have helped to drive tens of billions of dollars of investment into areas of the country with strong wind potential, bringing thousands of jobs with them. But they are now being phased out, with the support of the wind energy industry, ending after 2019."

More great news for Tesla investors.

Business Insider (8/21/18) reports: "During the week of June 23, Tesla reworked a little over 4,300 Model 3 vehicles, according to internal documents. Each car took an average of 37 minutes to repair. That means that Tesla had a

first pass yield of about 14% for Model 3 production the first week of June, or that 14% of the vehicles made didn't need rework. 'A competitive plant will pass 80%-plus vehicles that do not require repair. I would say the average plant is about a 65-80% range,' said Ron Harbour, a consultant at Oliver Wyman who founded and writes 'The Harbour Report,' a worldwide guide to manufacturing. What's more, Harbour said, the amount of rework required for each car adversely affects a plant's overall labor productivity, which is determined by dividing the total hours of human labor worked by the number of vehicles produced in the plant. 'It's a direct impact on their labor productivity if they have to add additional labor hours for repair,' he explained."

Universe Brain: the tax-interaction effect exacerbates the harms caused by pre-existing taxes, thereby offsetting the potential environmental benefits.

Twitter (8/20/18):

Marc Goldwein
@MarcGoldwein

Follow

Small Brain: A carbon tax is regressive
Large Brain: The money raised from a carbon tax can offset distributional effects
Galaxy Brain: If we use carbon tax revenue to reduce debt, we can gift our children a better environment and economy.

#2Birds1Stone

5:57 PM - 20 Aug 2018

13 Retweets **71** Likes

6 13 71

Energy Markets

WTI Crude Oil: ↑ $66.40

Natural Gas: ↑ $2.98

Gasoline: $2.83

Diesel: $3.14

Heating Oil: ↑ $214.17

Brent Crude Oil: ↑ $73.30

US Rig Count: ↑ 1141

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From: Maisano, Frank [frank.maisano@bracewell.com]
Sent: 11/5/2018 8:23:10 PM
To: Maisano, Frank [frank.maisano@bracewell.com]
Subject: Nov 5 PRG Energy Update: Election Showdown, Bracewell Post-Election Seminar Wednesday

Friends,

I know it is hard to believe, but the NCAA Field Hockey Playoffs are at hand...oh yes, and the midterm elections are tomorrow, too. There is a lot of election activity and we will see how things play out. While Stacey and Hannah voted early, I am going to the polls tomorrow with Adam for his first official vote, which I suspect he is going to use to offset his sister, Wellesley Hannah. I will say, I know we are all voting for Larry Hogan!!!

Here are a few things to note for tomorrow's big day:

1) The Bracewell team will all be in action tomorrow late into the evening. You can always email me (frank.maisano@bracewell.com) to get to any of our team or call (202) 997-5932. My friend Darren Goode can also help with analysis (202-550-6619) from his ClearPath experts.

2) Definitely follow our team on key twitter handles throughout the evening: Bracewell PRG - @PolicyRez ; Josh Zive - @jczive ; Liam Donovan - @LPDonovan ; Scott Segal - @ScottSegal3 ; and Frank Maisano - @fvmaisano. You should also follow and like The Lobby Shop Podcast @TheLobbyShopPod Other good places to follow for action: @JayFaison1 ; @ClearPathAction ; @globalenergy ; @RealClearEnergy

3) Mark your calendars for **Wednesday at 10:00 a.m.** when Bracewell's Policy Resolution Group (PRG) will offer political and policy analysis of the 2018 midterm elections – an award-winning and insightful mix of webinars, written materials and podcasts. **On Tap:** The "morning after" take on how this year's mid-term election results will affect the business community—addressing energy, environment, infrastructure, tax, Congressional investigations, key Committee leadership changes, and more. Special guest commentators from both sides of the aisle, coupled with PRG's lobbyists, attorneys, and strategic communications professionals, will provide analysis and answer your questions.

To get the Final Countdown (they should make that a hair metal song... oh wait), check out Friday's PRG Lobby Shop podcast with special guest Sean Trende of Real Clear Politics to talk ALL MID-TERMS and maybe a little Halloween and College Basketball.

In case you missed it, on Friday Virginia Gov. Ralph Northam ordered his state to develop a coastal resilience plan, update its flood standards for buildings and take other concrete steps to prepare for sea-level rise and natural disasters. MIT research expert Jeremy Gregory said the Governor's action puts Virginia among the nation's leaders on this topic. *"Governor Northam is smart to promote efforts to increase resilience against natural disasters for communities, residents and buildings."* Speaking of resilience and rebuilding, we hear Texas Gov. Greg Abbott may be out with a report on Hurricane Harvey recovery and rebuilding as soon as this week. Stay tuned...

Finally, a couple of congratulatory notes: 1) Helen Walter-Terrinoni joined AHRI as the association's new Vice President of Regulatory Affairs (She also is co-chair of the UN Montreal Protocol Foams Technical Options Committee); 2) our former colleague and EPA enforcement official Rich Alonso has joined Husky Energy to become the senior manager for regulatory affairs; 3) special kudos to our friend Kevin Borgia of Cypress Creek Renewables who married Anne Groom over the weekend and 4) Congrats to Huffpost's Kate Sheppard and her husband (new daughter Zora) and NRECA's Stephen Bell and his wife (new son Theo) who both had recent additions to their families.

Game Time...Here we go. If you need insight/perspective on anything, don't be afraid to call (even late) with your questions. Best,

Frank Maisano
(202) 828-5864
C. (202) 997-5932

FRANKLY SPOKEN

"My colleagues at the National Institute of Building Sciences are hitting important points in this report. Our significant research on the topic shows exactly what the authors report: natural hazards present significant risks to many communities across the United States. We know that the return-on-investment associated with resilient measures reduces the impacts of such events, resulting in significant savings in terms of safety, property loss and disruption of day-to-day life."

Jeremy Gregory, Massachusetts Institute of Technology, who has been leading research that addresses key issues and impacts/challenges of recovering from hurricanes, commenting on the new NIBS report looking at the costs of hazard mitigation from storms like Hurricane Michael. MIT's research is pushing the frontier of academic research into building materials, with implications for policymakers, building designers, communities, and the vulnerable residents of hazard-prone areas.

ON THE POD

RealClear Expert Talks Mid-Terms on PRG Podcast– This week, the Bracewell Lobby Shop Podcast team talks to Sean Trende, Senior Elections Analyst at Real Clear Politics, and it's all Midterms all the time. The episode is now live on Stitcher, SoundCloud, and Google Play Music.

FUN OPINIONS

Mercatus: Free Market Principles Missing in Ethanol Rule Changes – In a column syndicated by Creators, George Mason University Mercatus Center research fellow Veronique de Rugy says the EPA's effort to end its prohibition on the sale of E15 is cronyism at its worst. President Trump's "bad trade policy, in other words, is leading to bad politics and thus the perpetuation of other bad policies. Were it not for the president's need to placate a constituency feeling the pain of his trade war, the administration might have approached energy policy reform in a more comprehensive way, and with a real focus on market-based solutions that avoid picking winners and losers as the RFS mandate does."

IN THE NEWS

VA Gov Issues Resilience Order – Virginia Gov. Ralph Northam (D) ordered his state to develop a coastal resilience plan, update its flood standards for buildings and take other concrete steps to prepare for sea-level rise and natural disasters. See his Executive Order 24 here: https://www.governor.virginia.gov/newsroom/all-releases/2018/november/headline-833462-en.html Governor Northam took the action at the 6th Annual Conference of the Virginia Coastal Policy Center at the College of William & Mary Law School and is among the most comprehensive actions undertaken by any state to improve resilience and protect people and property from natural catastrophes. MIT research expert Jeremy Gregory said the Governor's action to prepare for sea-level rise and natural disasters since his action puts Virginia among the nation's leaders on this topic. *"Governor Northam is smart to promote efforts to increase resilience against natural disasters for communities, residents and buildings. Our research at MIT shows the value of investing in such measures. Factoring resilience into building design and long-term planning can help reduce lifetime repair and maintenance costs in hazard-prone areas and allow communities to recover more quickly from a disaster."* You can reach him here: jgregory@mit.edu or 617-324-5639.

EIA Says Emissions Down – The EIA says U.S. electric power sector carbon dioxide emissions (CO2) have declined 28% since 2005 because of slower electricity demand growth and changes in the mix of fuels used to generate electricity. EIA has calculated that CO2 emissions from the electric power sector totaled 1,744 million metric tons (MMmt) in 2017, the lowest level since 1987. In the United States, most of the changes in energy-related CO2 emissions have been in the

power sector. Since 2005, as power sector CO2 emissions fell by 28%, CO2 emissions from all other energy sectors fell by only 5%. Slower electricity demand growth and changes in the electricity generation mix have played nearly equal roles in reducing U.S. power sector CO2 emissions. U.S. electricity demand has decreased in 6 of the past 10 years, as industrial demand has declined and residential and commercial demand has remained relatively flat. If electricity demand had continued to increase at the average rate from 1996 to 2005 (1.9% per year) instead of its actual average rate of -0.1% per year, U.S. power sector CO2 emissions in 2017 would have been about 654 MMmt more than actual 2017 levels. If the mix of fuels used to generate electricity had also stayed the same since 2005, U.S. power sector CO2 emissions would have been another 645 MMt higher in 2017. The power sector has become less carbon intensive as natural gas-fired generation displaced coal-fired and petroleum-fired generation and as the noncarbon sources of electricity generation—especially renewables such as wind and solar—have grown. The substitution of natural gas for other fossil fuels has largely been market driven, as ample supplies of lower-priced natural gas and the relative ease of adding natural gas-fired capacity have allowed it to pick up share in electric power generation in many markets. In 2016, natural gas generation surpassed coal as the largest source of electricity generation.

AWEA: States Increasing Wind Output – Seven states, from Nebraska to Massachusetts, will soon build enough wind turbines to more than double their capacity to generate clean and reliable wind energy, according to the American Wind Energy Association (AWEA) *U.S. Wind Industry Third Quarter 2018 Market Report* released today. The report also reveals the first firm orders for 4-megawatt (MW) land-based wind turbines, nearly twice as powerful as the average wind turbine installed in 2017. Nationally, the low cost and reliability of wind power continued to drive strong industry growth in the third quarter. Significantly, seven states now have enough wind projects under construction or in advanced stages of development to more than double their capacity to generate electricity from the wind when they are completed. Those include heartland states with land-based wind under development—Arkansas, Nebraska, New Mexico, South Dakota, and Wyoming—as well as coastal states Maryland and Massachusetts, where offshore wind is poised to scale up.

Report: Mitigation Measure Reduce Long-Term Costs – The National Institute of Building Sciences issued its latest report in a multi-year study on natural hazard mitigation. The second in a series of interim results, Natural Hazard Mitigation Saves: Utilities and Transportation Infrastructure examines the potential benefits associated with investing in mitigation for select utility and transportation infrastructure. Natural hazards present significant risks to many communities across the United States. Fortunately, there are measures governments, building owners, developers, tenants and others can take to reduce the impacts of such events. These measures—commonly called mitigation—can result in significant savings in terms of safety, and prevent property loss and disruption of day-to-day life. The project team sought to use Economic Development Administration (EDA) grants to look at how the agency's mitigation efforts to address four potential perils and four categories of utilities and infrastructure might benefit communities. Of the 859 EDA grants the project team reviewed, only 16 related to natural-hazard mitigation of utilities and transportation lifelines. Of these, the team acquired sufficient data to estimate benefit cost ratios (BCRs) for 12 mitigation investments.

PJM Study – A new study from grid operator PJM say fuel delivery systems in its vast footprint can generally withstand an extended period of stress and remain reliable, though extreme scenarios could impact the grid. PJM, whose system covers 13 states and 65 million people, launched the study this May as the federal government, several states, and other grid operators considered interventions aimed to boost resilience in markets increasingly assailed by disruptions. According to PJM, "Grid operators around the world find themselves contending with new challenges, including a rapidly changing fuel mix, stressed fuel delivery systems, extreme weather, cyberattacks and physical security threats. As a result, the security of the fuel supply—one component of the resilience of the power grid—has become an increased area of focus." The study's conclusions are for the most part unsurprising. In a 14-day period of cold weather with a typical winter peak load (of 134,976 MW, which occurs 50% of the time), and even considering generation retirements and additions that had been announced as of October 1, 2018, the system would remain reliable, it says. Even in a scenario that combines an extreme winter load (of 147, 72 MW, which occurs 5% of the time) and a pipeline disruption at a critical location that serves a significant number of generators, PJM's system would still be reliable, the report said. However, it also identifies a "tipping point"—where the system risks emergency procedures and load loss. That event would occur if the system had escalated retirements in combination with an extreme winter load.

PJM Study Scenario Details – *Power* Magazine said the study analyzed two "escalated retirement" scenarios: one modeled retirements of 32,216 MW by 2023 but assumes 16,788 MW of capacity will be added to meet the installed reserve margin requirement of 15.8%. The other modeled retirements of 15,618 MW by 2023 with no capacity replacement. Both retirement scenarios showed similar results that indicate the system may be at risk of emergency procedures and load loss, the study says. However, PJM noted its reserves have "historically exceeded the installed reserve margin reliability requirement," and that the range of retirements analyzed represented "possible bounds" of retirement levels, "recognizing that market signals would limit retirements between those bounds." As the system comes under more stress, the study also suggests that "key elements such as on-site fuel inventory, oil deliverability, location of a fuel supply disruption, availability of non-firm natural gas service, pipeline configuration and demand response become increasingly important."

ON THE SCHEDULE THIS WEEK

UN Montreal Protocol, HFC Meeting Set – With HFC issues in the news, today through Friday will see the 30th Meeting of the Parties to the Montreal Protocol in Quito, Ecuador. We will have folks there reporting on the action.

Transmission Summit Feature SoCo Exec – The 17th annual Transmission & Distribution Summit is today and tomorrow in Houston. The Summit will focus on key topics that have occupied the discussion by industry stakeholders and a comprehensive strategy to guarantee that the US can produce clean, climate friendly power and deliver it reliably at reasonable costs to all users. It will feature executives from Southern Co., American Municipal Power, and other entities.

NEI Expert to Discuss Nuclear Power Future – Today at 5:00 p.m., Johns Hopkins University's SAIS program will host a forum on nuclear power. In the United States 20 percent of electricity comes from 99 operating nuclear reactors. Looking ahead some 60 new nuclear reactors are under construction, mostly in Asia. In North America and Western Europe the industry is challenged by retirement of older reactors and reduced competitiveness and policy support. In global markets US companies, until recently industry leaders, now face strong competition from other countries. These and other issues will be addressed by speaker NEI's Daniel Lipman, who is also a Johns Hopkins SAIS alumnus.

ELECTION DAY – TOMORROW, Tuesday, November 6th

DOE to Hold Cybersecurity Peer Review – Tomorrow through Thursday, DOE's Cybersecurity for Energy Delivery Systems (CEDS) program is holding a Peer Review in Arlington, Virginia, where energy industry representatives can learn about cutting-edge cyber R&D in active projects and provide input on future CEDS research priorities. CEDS R&D projects deliver advanced tools and technologies for the energy sector's operational technology (OT)—the digital systems and networks that control energy delivery. To reduce cyber risk to these specialized systems, CEDS and its R&D partners are developing innovative capabilities for energy delivery systems and devices to prevent attacks, detect malicious activity, and automatically adapt to survive cyber-attacks while sustaining critical functions. The 2018 Peer Review provides an opportunity to directly engage with researchers designing the next generation of cybersecurity solutions for the energy sector. Researchers from each of the projects will present their project(s) and progress and respond to expert review panel questions and discussion. The CEDS Peer Review is open to the public and is a great opportunity for representatives of the energy industry to learn more about the program's extensive research portfolio.

Forum to Look at Future of Storage – Energy Storage North America holds a conference in Pasadena, Calif tomorrow through Thursday to look at the future of energy storage and role it may play. Featured speakers include our friend Caroline Choi from SoCalEd, as well as others like former FERC commissioner Robert Powelson, Cal PUC Commissioner Carla Peterman, John Rhodes of NYPSC, Cal State Sen. Nancy Skinner and others from Tesla, Cummins and other entities.

Forum to Look at Climate Challenges – The Atlantic Council's Future Europe Initiative holds an event tomorrow at 9:30 a.m. looking at technological revolution and globalization. These items have opened up the "Age of Perplexity." At this critical juncture, the Atlantic Council, in partnership with BBVA and the Elcano Royal Institute, will host a public discussion featuring some of the authors from *The Age of Perplexity: Rethinking the World We Knew*, the book published

by BBVA, through its OpenMind initiative, to share their perspectives on the major transformations currently taking place in our society and the impact they may have on the future of the liberal international order. These are the challenges and opportunities that will define the 21st century.

BPU Head to Keynote NJ Solar Conference – SolarWakeup Live! Jersey City will be held tomorrow at White Eagle Hall in Jersey City. New Jersey BPU President Joe Fiordaliso and SEIA President Abby Hopper will headline.

SE Renewable Forum Set – The Southeast Renewable Energy Summit will be held in Atlanta on Wednesday through Friday to look at the region's policies on renewables, opportunities for solar and wind companies. See the speakers and agenda here.

Forum to Look at Batteries – On Wednesday at Noon, the Information Technology & Innovation Foundation (ITIF) will hold an expert panel discussion providing an up-to-the-minute perspective on the state of the global battery race. As the auto industry shifts toward electric vehicles and the electricity grid draws more energy from variable renewables, high-capacity, high-performance and affordable batteries are becoming one of the most important areas of technological innovation needed to reduce carbon emissions. This is why batteries are emerging as a strategic focus for global manufacturing and innovation. Speakers will include Georgetown's Joanna Lewis and Quartz Reporter Akshat Rathi.

WRI to Host Climate Resilience Forum – Leading resilience experts from the World Resources Institute (WRI), the World Bank and Tetra Tech will join a discussion on Wednesday at 12:30 p.m. at WRI. The group will dive into a new approach to climate resilience, how to identify situations that warrant significant changes and strategies for effective, widespread implementation. Speakers include the World Bank's Arame Tall, Tetra Tech's Richard Choularton and WRI experts Stefanie Tye and Rebecca Carter.

ACORE SF Forum Set – The American Council on Renewable Energy holds the Renewable Energy Grid Forum in San Francisco on Thursday featuring Federal Energy Regulatory Commissioner Rich Glick and California ISO head Stephen Berberich. Greg Wetstone also speaks.

Webinar Looks at Enviro Justice Questions – EPA sponsors a webinar on Thursday at 1:00 p.m. looking at environmental justice factors that contribute to vulnerability from natural disasters and provide examples of how EPA and its partner programs have worked to help build resilience within vulnerable communities.

USEA to Look at Solid Oxide Fuel – The US Energy Assn will hold a forum on Thursday at 1:00 p.m. to look at DOE's solid oxide fuel program. DOE's Office of Fossil Energy has supported the development and application of solid oxide fuel cells for nearly two decades. The first half of this presentation briefly traces the history of fuel cells, discusses some of the technical aspects of solid oxide fuel cells, and describes their advantages and disadvantages. The second half describes the solid oxide fuel cell program as implemented by the Office of Fossil Energy which includes a brief description of some of the projects supported by the Department and some insights on the routes that exist for interested investigators to become involved in this research. DOE program director Steven Ross speaks.

Wilson Forum Looks at China Timber – The Wilson Center holds a discussion on Thursday of on-the-ground investigations by NGOs and lawyers into the environmental and social damage from Chinese and other foreign extractive industries. Drawing on a new report by Global Witness, Lela Stanley will talk about the illegal logging in the Solomon Islands and Papua New Guinea, two countries that supply about 50% of China's tropical log imports. Jim Wormington will relate findings from extensive research and interviews in Guinea, the biggest supplier of bauxite to China's aluminum industry. Jingjing Zhang, a longtime Chinese environmental lawyer, will share a collection of stories on her work investigating the environmental and human rights violations in Africa and Latin America, from helping a community in Equator win a court case to suspend a Chinese-owned gold mine in a mountain nature reserve to interviews of bauxite mining-affected communities in Guinea. She and other speakers will highlight necessary legal changes in China and in host countries and increased community involvement will be critical to create more sustainable and humane supply chains.

GW's Planet Forward to Look at Electric Vehicles – On Friday, Planet Forward is hosting a forum with Genevieve Cullen, president of the Electric Drive Transportation Association (EDTA) to talk about the future - the future of electric vehicles. Are Tesla, Volvo, and Ford leading the way in a new era of transportation? What does it mean for the future? How will the current administration impact a more sustainable future?

JHU to Host Forum on Electricity Market Optimization – On Friday at 12:30 p.m., Johns Hopkins University hosts a forum on modeling electricity markets with optimization. Electric power: done wrong, it drags the economy and environment down; done right, it could help to create a more efficient, brighter, and cleaner future. Better policy, planning, and operations models--both simple analytical, and complex computational ones--are essential if we're going to do it right. Better modeling is also fun, as the math of electricity models is inherently interesting and revealing--models often show flaws in our intuition. Used intelligently, models can point us towards better regulations, investments, and operating policies. Simple models provide insights, while complex models provide the numbers needed to choose specific investments and policies. Speaker Dr. Ben Hobbs will highlight one application using the power market model COMPETES: the design of renewable portfolio standards, and an analysis of their price and economic efficiency impacts in the Year 2030. He will also examine the cost of country-specific targets versus EU-wide targets.

IN THE FUTURE

Grid Conference Set for SF – ACORE's Renewable Energy Grid Forum will be held on Thursday November 8th at the Grand Hyatt San Francisco to debate challenges and opportunities presented by new energy market reforms and the evolving grid.

VETERAN'S DAY – Sunday, November 11th

Forum to Look at Nuclear Legislation – ClearPath, U.S. Nuclear Industry Council, Nuclear Innovation Alliance, Third Way and Atlantic Council host a discussion on the Nuclear Energy Leadership Act. Speakers include Idaho National Lab Director Mark Peters, NuScale Power Chief Strategy Officer Christopher Colbert, Pillsbury Law Senior Associate Anne Leidich and Sarah Ladislaw, director of the energy and national security program at the Center for Strategic and International Studies. Panelists will discuss a comprehensive blueprint for the U.S. to once again lead the world in next-generation nuclear power. The Nuclear Energy Leadership Act (NELA)addresses the lack of aggressive yet achievable milestones for U.S.-led advanced reactor technologies and of an overall long-term strategy for the direction of U.S. nuclear science and engineering research and development.

Wood Stove Showcase Set – The 2018 Wood Stove Design Challenge is being held next Monday and Tuesday on the National Mall. The event is a showcase and competition for advanced wood stoves with automated features and/or stoves that make electricity. Awards will be announcement on November 13th at 2:30 p.m. You can see info on the awards here and more info on details here.

Congress Returns for Post-Election Congressional Session – Wednesday November 14th

Senate Energy to Hear from FERC, DOE Nominees – On Thursday November 15th, the Senate Energy and Natural Resources Committee will hear from FERC nominee Bernard McNamee and Rita Baranwal to head the Department of Energy's Office of Nuclear Energy. Baranwal has extensive and senior nuclear policy experience includes as director of the Gateway for Acceleration Innovation in Nuclear effort housed at Idaho National Laboratory since August 2016. She was previously director of technology development and core engineering/nuclear fuel at Westinghouse Electric and a manager at Bettis Atomic Power Laboratory.

Brookings to Host Sustainable Energy Exec – On November 19th, the Cross-Brookings Initiative on Energy and Climate will host Rachel Kyte, CEO of Sustainable Energy for All, in a discussion facilitated by initiative Co-Chair David G. Victor. The pair will discuss how to provide energy services to the world's poorest and how to encourage the development of greener and more efficient energy systems.

THANKSGIVING DAY – November 22nd

Wilson to Look at Global Water Issues – On November 28th, the Wilson Center along with US AID and the World Wildlife Federation will host a forum taking stock on the 1st year of the 1st U.S. Global Water Strategy. The forum will explore new research and practice on water, peace, and conflict; and highlight the centrality of water to global prosperity. Speakers will include Sen. Chris Coons and many more.

Forum to Talk Private-Public Nuclear Partnerships – DOE and X-Energy are hosting am "Atomic Wings Lunch & Learn" on November 28th at 11:45 a.m. looking at Public-Private Partnerships in Nuclear Energy. Speakers include Sen. Todd Young (R-Ind.), Rep. Chuck Fleischmann (R-Tenn.), Office of Nuclear Energy Deputy Assistant Sec. Shane Johnson, Georgia Public Service Commissioner Tim Echols and ClearPath Executive Director Rich Powell.

EPA RFS Standard on Track for Nov 30 – The EPA is expected to release its 2019 biofuel blending mandate for the Renewable Fuel Standard by November 30th. EPA recently sent the RVOs to the White House for review.

COP 24 Headed to Poland – The 24th Conference of the Parties to the United Nations Framework Convention on Climate Change will be held in Katowice, Poland in December 3rd to the 14th.

Southern Holiday Party Set – The Southern Company will host its annual holiday party on December 5th at Union Station.

State of the Energy Industry Event Set – Mark your calendars for January 3rd when API will conduct its annual State of the Energy Industry event at the Reagan International Trade Center.

FRANK MAISANO
Senior Principal
Ext. 5864
Policy Resolution Group

Message

From: American Energy Alliance [info=americanenergyalliance.org@mail114.suw111.mcdlv.net]
on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 9/6/2018 3:30:56 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: One night in Bangkok and the world's your oyster...

View this email in your browser

In the Pipeline

MORNING ENERGY NEWS | 9.6.2018

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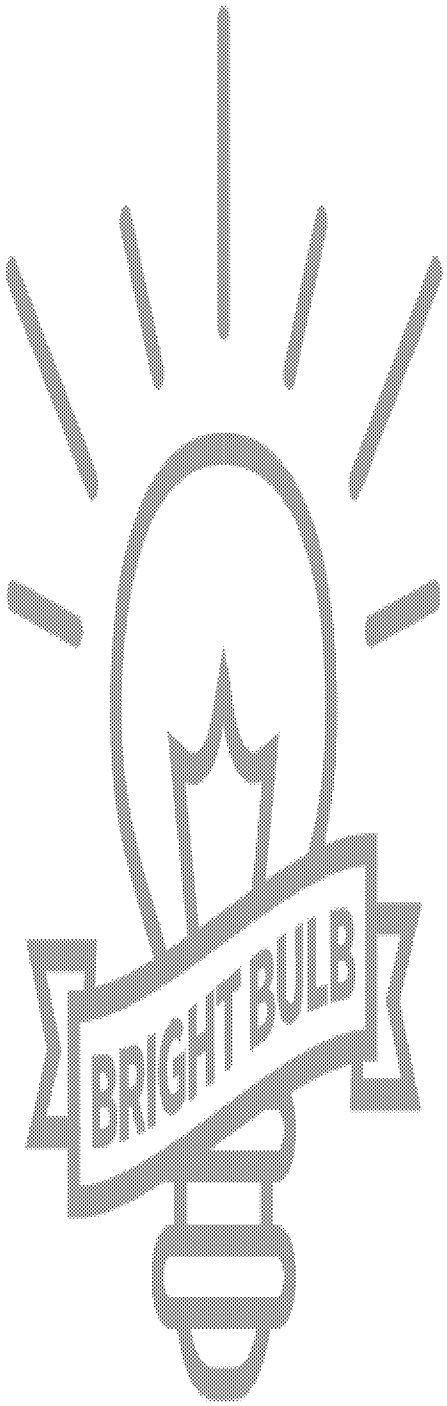
If at first you don't succeed, try, try again.

Bloomberg (9/4/18) reports: "After the United Nations's first attempt to build a global carbon market fizzled from $33 billion to almost nothing, climate envoys from nearly 200 countries are meeting in Bangkok this week to give it another go. The diplomats gathered in Bangkok this week are working on a so-called Sustainable Development Mechanism that would channel investment into projects that cut pollution in some of the poorest countries of the world."

OH MY GOD
THAT'S TODAY !



"Beginning around 1981, liberal activist groups recognized EPA could be used to advance their political agenda by regulating virtually all human activities regardless of their impact on the environment. Politicians recognized they could win votes by posing as protectors of the public health and wildlife. Industries saw a way to use regulations to handicap competitors or help themselves to public subsidies. Since that time, not a single environmental law or regulation has been passed that benefitted either the environment or society."

– Jay Lehr, The Heartland Institute

Trump finally taps Happ. We couldn't be happier.

Climate Wire (9/5/18) reports: "Happer, 79, told E&E News in email that he began serving yesterday on the National Security Council as the senior director for emerging technologies. NSC officials confirmed Happer's new role but declined to provide further detail about the appointment, which CNN first reported. When asked about his new NSC role, Happer said he would do his best to ensure that federal policy decisions "are based on sound science and technology. An emeritus physics professor at Princeton University and a former Energy Department official under the George H.W. Bush administration in the 1990s, Happer is well-known for his public criticism of mainstream climate modeling and his ties to the Trump administration."

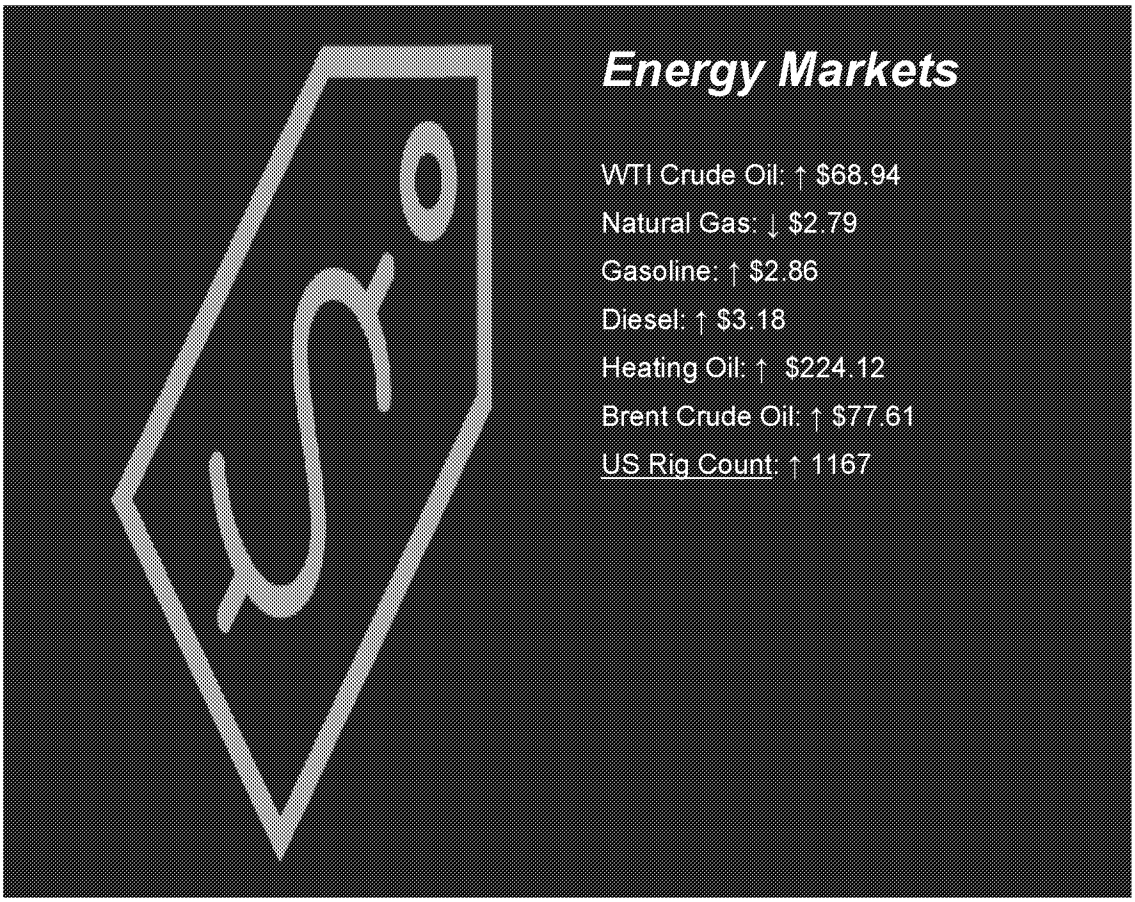
New York Times prints misleading anti-fracking op-ed. But at least they list the author this time.

Energy In Depth (9/4/18) reports: "Penned by Bethany McLean, author of the soon-to-be-released book 'Saudi America: The Truth About Fracking and How It's Changing the World,' the piece's hyperbolic headlines claim that, 'The Next Financial Crisis Lurks Underground' and that 'Fueled by debt and years of easy credit, America's energy boom is on shaky footing.' But as several third-party experts have pointed out on social media since the op-ed was published, a close analysis of the piece reveals McLean's 'shale bubble' narrative is premised on outdated data that in no way reflects the financial stability established in the shale industry since OPEC ended its failed price war two years ago. Furthermore, the authors' contradictory statements lauding the industry's resilience and ability to improve efficiency undermine her core argument completely."

Environmentalists protest replacing an older pipeline with a newer and safer pipeline. 'Cause they care so much about the environment.

The Daily Caller (8/30/18) reports: "Protesters took to the streets of Bemidji, a city in northwest Minnesota, on Wednesday to protest against plans to replace a crude oil pipeline with a new one. The activists — which numbered at around 50 — linked arms at a busy downtown intersection in order to block traffic, and

called on Democratic Gov. Mark Dayton to halt progress of the project. Numerous protesters were cited for disorderly conduct before the crowd finally dispersed."



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on behalf of Tom Pyle [info@americanenergyalliance.org]
Sent: 8/21/2018 1:56:43 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Good things come to those who wait.

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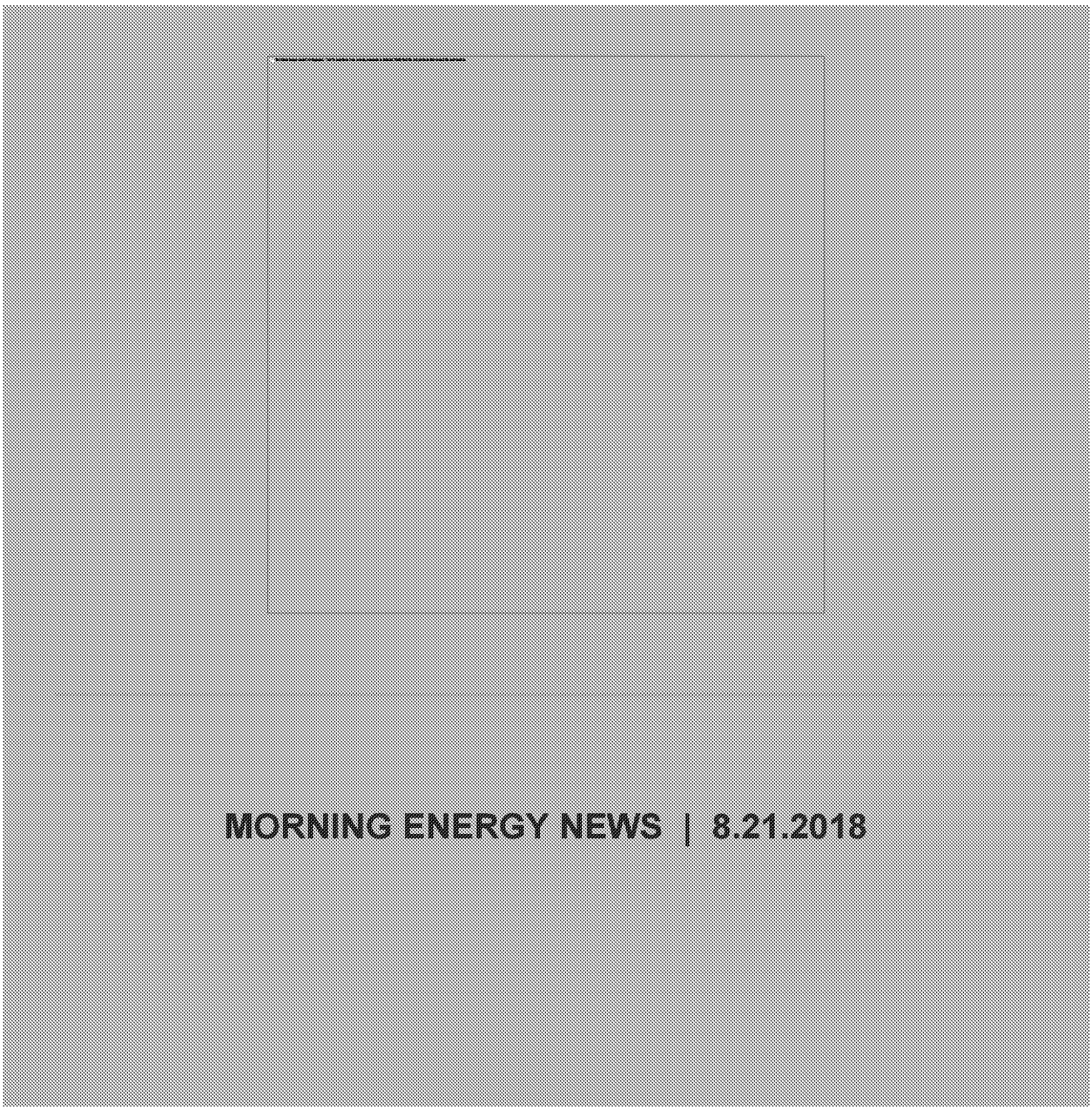

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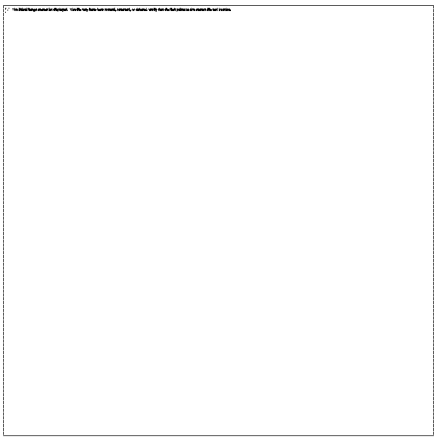
Another domino falls.

New York Times (8/20/18) reports: "Andrew Wheeler, the acting administrator of the Environmental Protection Agency, on Monday signed a plan to weaken regulation of coal-fired power plants, advancing a proposal that the coal industry has hailed as an end to burdensome regulation and environmentalists have criticized as a retreat in the battle to address climate change. Mr. Wheeler's signature officially sets in motion one of the Trump Administration's most significant rollbacks yet of former President Barack Obama's climate change legacy, alongside an earlier decision to let automobiles pollute more."



"There are currently 7.6 billion people on the planet, and in 2030 there will be 8.6 billion — another one billion in just over a decade! If even half of them get cars, have air-conditioners and eat high-protein diets like Americans now do, we will devour and burn up the planet beyond recognition."

– Tom Friedman, New York Times

The sky is not falling.

Orange County Register (8/18/18) op-ed: "For millennia, great cities, and countries, have dealt with major environmental challenges. Ancient cities in the Middle East as well as Rome built aqueducts to bring water from the high mountains for their citizens — much like California did in the last century.

Others, like the Netherlands, have engineered their environment to keep water out. Better than donning a hair shirt to fight climate change, maybe we should be putting our engineers and planners to work finding the best way to adapt to looming environmental challenges, as regions have done since the earliest times."

Wait, are't we the bad guys?

Washington Times (8/20/18) op-ed: "The major reason for the reduced pollution levels is the shale oil and gas revolution that is transitioning the world to cheap and clean natural gas for electric power generation. Meanwhile, as our emissions fell, the pollution levels rose internationally and by a larger amount than in previous years. So much for the rest of the world going green. The world's largest emitter of carbon dioxide emissions is China. According to the invaluable Institute for Energy Research, 'China produces 28 percent of the world's carbon dioxide emissions. India is the world's third largest emitter of carbon dioxide and had the second largest increment (93 million metric tons) of carbon dioxide emissions in 2017, more than twice as much an increase as the U.S. reduction.'"

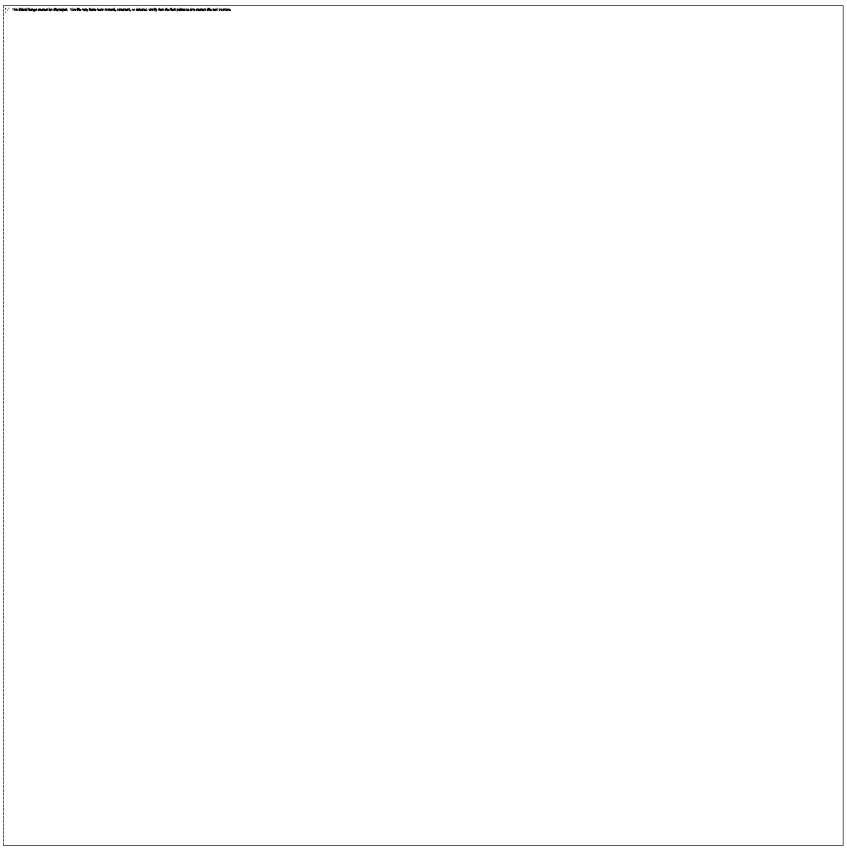
You read that right. Myron Ebell and John Holdren agree.

The Hill (8/20/18) op-ed: "After a long vacancy, President Trump nominated Kelvin Droegemeier of Oklahoma to fill the position of Director of the Office of Science and Technology Policy (OSTP), often referred to as the White House Science adviser. John Holdren, Obama's science adviser, called him 'a very good pick.' Climate scientists such as Katherine Hayhoe and Judith Curry have expressed their approval. It's rare we see Myron Ebell, who headed the EPA transition team, and Rush Holt, the head of the American Association for the Advancement of Science, in emphatic agreement. There are many reasons for this agreement. Droegemeier is a working scientist whose enthusiasm will be infectious and convincing, something sorely needed within the demoralized ranks of federal and university scientists."

NRDC vs. Sierra Club. Get your popcorn ready.

Desert Sun (8/16/18) reports: "California lawmakers will soon decide on a bill that could either be a gift to the coal industry or a boon to solar power —

depending on which environmental group you ask. Assembly Bill 813 is a priority for Gov. Jerry Brown. The legislation would pave the way for a regional energy market involving as many as 14 western states, which would allow California to sell more solar power to its neighbors and import cheap renewable energy from other states, such as wind power from Wyoming. The Golden State would be required to give up political control of most of its power grid, which is currently overseen by a five-member board appointed by the governor and confirmed by the state Senate. Several major environmental groups — including the Natural Resources Defense Council, the Environmental Defense Fund and the Union of Concerned Scientists — think that's a good idea. They argue a regional market would create huge efficiencies and reduce the costs associated with California's transition from fossil fuels to renewable energy. But those groups have a surprising opponent: the Sierra Club."



Energy Markets

WTI Crude Oil: ↑ $66.95
Natural Gas: ↑ $2.98
Gasoline: ↓ $2.83
Diesel: $3.14
Heating Oil: ↑ $211.87
Brent Crude Oil: ↑ $72.35
US Rig Count: ↓ 1133

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on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 9/21/2018 2:38:09 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Ah, the crisp air of autumn comes.

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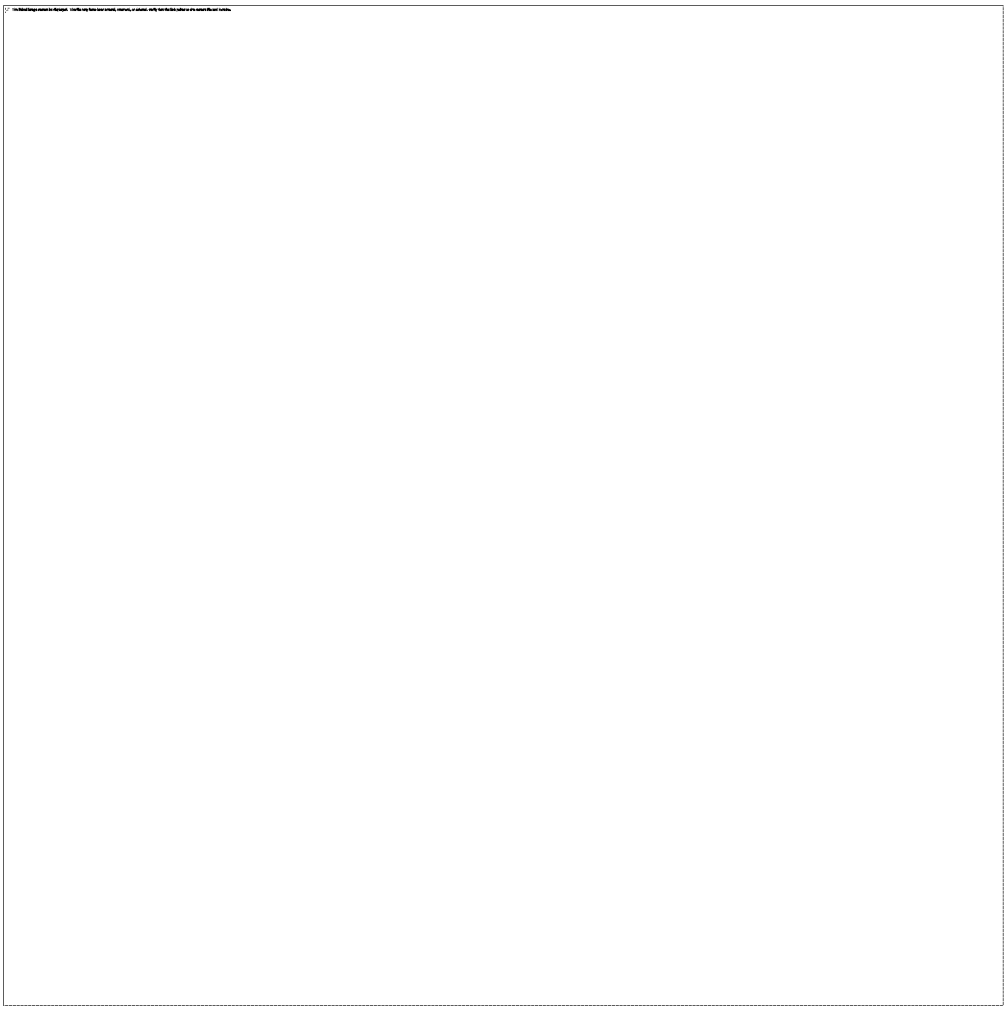
Are you out of your gourd?

Huffington Post (9/19/18) reports: "The two Republican congressmen pushing a bill to put a price on planet-warming emissions wants to tax carbon at $24 per ton. Four Democratic lawmakers pegged the price at $50 per ton in their own legislation. The Trump administration, for its part, settled on something more lower: $1 to $7 per ton by 2020. But to really make a difference, a better answer is something closer to $230 per ton, according to a study by the People's Policy Project, a left-leaning think tank, published Wednesday. That would raise the cost of goods and services by roughly $750 billion, including price hikes of 79 percent for gas, 51 percent for electricity, 23 percent for airfare and 9 percent for groceries."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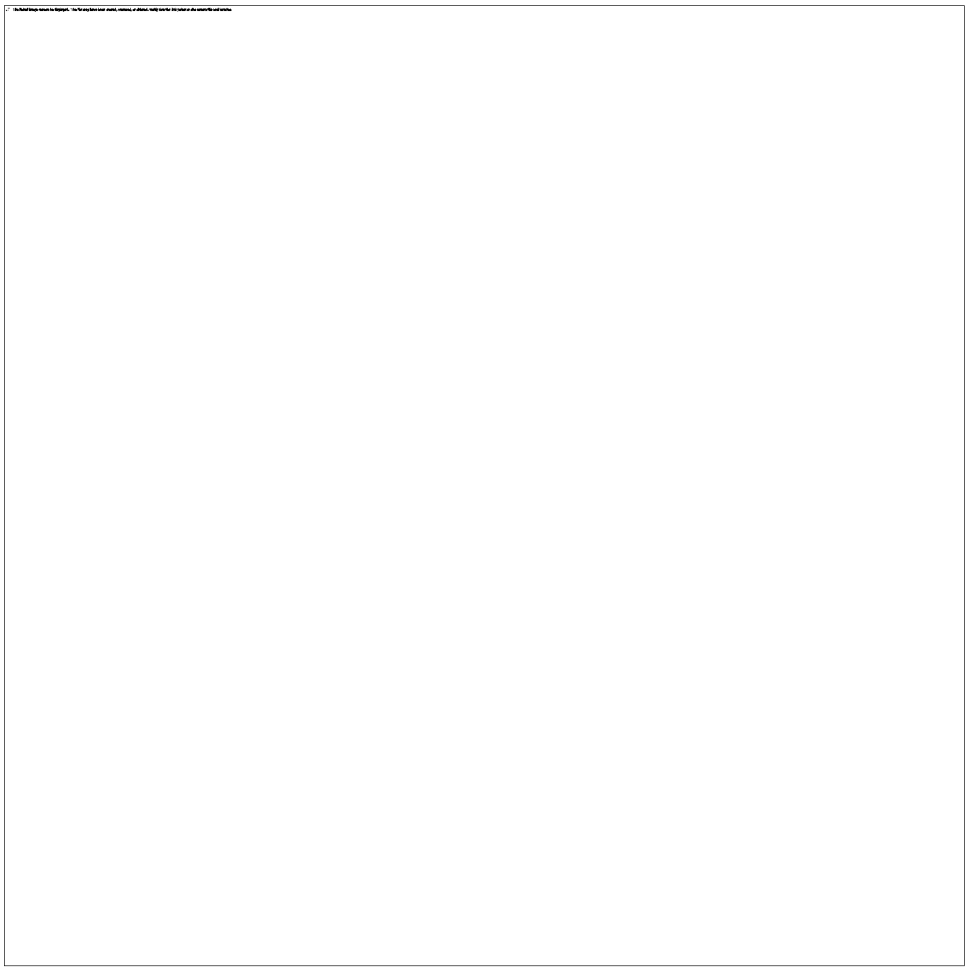
"With U.S. gas production continuing to increase to all-time records, and a tripling of our export terminals to six by the end of next year, the International Energy Agency reports that we have the potential to pass Qatar and Australia to become the world's largest exporter of LNG within five to seven years. From an economic, environmental, and security perspective the importance of this achievement can't be overstated."

– Jude Clemente, Forbes

Scrutinize the scrutinizers.

E&E News (9/19/18) reports: "Federal judges appeared skeptical today of environmental challenges to a set of hydropower projects in Maine. At issue are the actions of two agencies: the Federal Energy Regulatory Commission's approval of licensing amendments for three hydropower sites along the Kennebec River and NOAA Fisheries' analysis of the impacts to a distinct population of Atlantic salmon in the Gulf of Maine. Environmentalists arguing before the U.S. Court of Appeals for the District of Columbia Circuit stressed the potential harm to the salmon. But the judges were more interested in a jurisdictional question: whether environmental groups had brought a proper challenge at all."

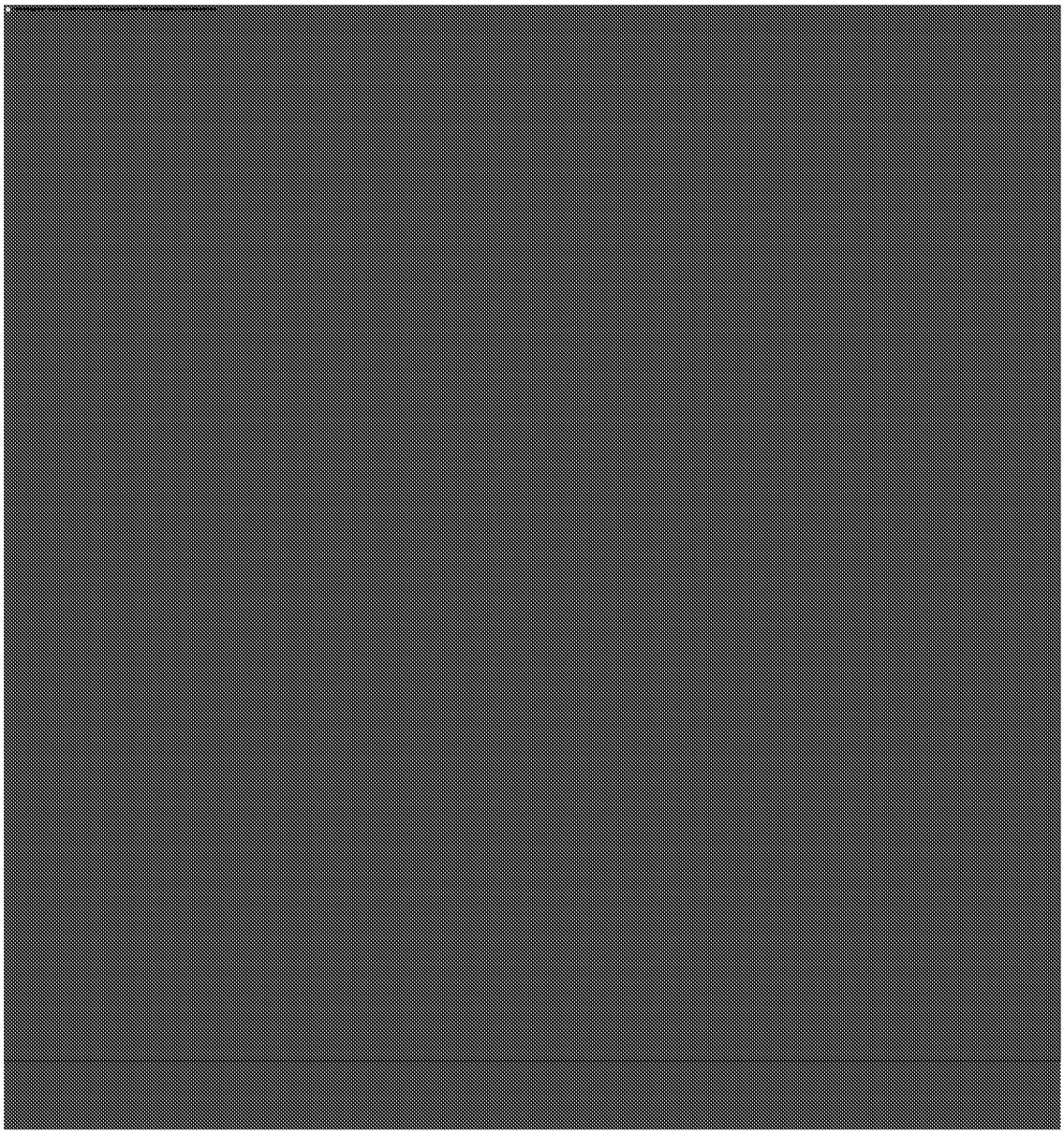


Because what we really need is for higher education to be more expensive.

Harvard Crimson (9/20/18) column: "But, while our government stammers, the crisis is worsening. This is why we must call upon Harvard to act. It is high time that the University places a price on carbon. And internal regulation, a manifestation of self-control, is just the tactic to tackle it. Enter the internal carbon tax. In this mechanism, an institution imposes a regulation — for each ton of carbon emitted, a predetermined fee is charged and then redistributed to a separate revenue stream — to which it will hold itself accountable. In other words, for each ton of carbon used, whether for heating or for travel, the levied fee is taken from the involved department and redirected to a carbon tax 'piggy-bank.'"

Fight 'em, Trumpy Bear!

The Hill (9/19/18) reports: "The Democratic attorneys general of California and New Mexico sued the Trump administration to stop it from rolling back methane pollution standards for oil and natural gas drilling. Hours after the Interior Department unveiled its final action to weaken the Obama administration's methane rule for drillers on federal land, California Attorney General Xavier Becerra and New Mexico Attorney General Hector Balderas filed suit in northern California's federal court."



If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance

Myron Ebell, Competitive Enterprise Institute

Phil Kerpen, American Commitment

William O'Keefe, George C. Marshall Institute

Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity

Joe Bast, Heartland Institute

David Ridenour, National Center for Public Policy Research

Grover Norquist, Americans for Tax Reform

Sabrina Schaeffer, Independent Women's Forum

George Landrith, Frontiers of Freedom

Thomas A. Schatz, Citizens Against Government Waste

Richard Manning, Americans for Limited Government

Adam Brandon, FreedomWorks

Rich Collins, Positive Growth Alliance

Craig Richardson, E&E Legal

The Honorable George Allen, American Energy Freedom Center

Dick Patten, American Business Defense Council

Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute

Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $70.83

Natural Gas: ↓ $2.95

Gasoline: $2.85

Diesel: $3.18

Heating Oil: ↓ $224.97

Brent Crude Oil: ↑ $79.51

US Rig Count: ↑ 1151

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Message

From: Maisano, Frank [frank.maisano@bracewell.com]
Sent: 11/12/2018 8:31:07 PM
To: Maisano, Frank [frank.maisano@bracewell.com]
Subject: Nov 12 PRG Energy Update: Election Wraps, Congress Lame Duck

Friends,

That was an interesting election...and it is still going in some places. And despite massive handwringing, it seems as if most expectations and pundits were pretty close to right. We are still following the action in Florida, Georgia and Arizona, but it is clear Democratic will open a number of new oversight doors come January. Our experts are following the action closely and will be a good resource for you for background, perspective and comment.

We hope you were able to join us for Bracewell PRG's post-election webinar. If you missed, you can get the full audio here. Also, the webinar slide deck, additional detailed issue briefs and an enhanced, archived version of the audio are available on the PRG website, so feel free to check out the details.

- **Full Post-Election Analysis Report** (written briefs, webinar audio, slides): The Policy Resolution Group's 2018 Post-Election Analysis Report
- **Special episode of The Lobby Shop** (webinar audio): Apple Podcasts, SoundCloud, Google Play, and Stitcher

The House and Senate are in session Wednesday through Friday. Congress returns after a long break before the midterms for a lame duck session to debate/address government funding before a partial shutdown on December 7.

There are a number of events tomorrow, headlined by the ClearPath and others 2:00 p.m. discussion on the Nuclear Energy Leadership Act. Also in the morning, the Atlantic Council's Global Energy Center talks LNG with DOE's Mark Menezes and Cheniere's Christopher Smith.

On Wednesday, the American Enterprise Institute will hold a discussion at 3:30 p.m. looking at the conservative case for a carbon tax while Heritage looks at Federal land management with a number of federal officials - same "Bat" time.

Then on Thursday, among the Congressional hearings is the Senate Energy nomination hearing for FERC nominee Bernard McNamee, Rita Baranwal to head the Department of Energy's Office of Nuclear Energy and Ray Vela to be National Park Service Director. Also, the US Energy Assn is hosting its inaugural Energy Efficiency and Supply Forum at the Embassy of Canada.

Finally on Friday, ACORE, SEIA and think tank Energy Innovation will host a lunchtime panel discussion that will focus on the outlook for clean energy in the White House, Congress, and state capitals following the 2018 midterm elections. Abby and Greg Wetstone are among the presenters.

With a slower schedule next week because of Thanksgiving (although the Redskins and Cowboys do play on Thanksgiving Day this year), we will give you a preview of who may be headed where in the new House, including the expected resurrection the Select Global Warming Committee in some form. Stay tuned.

Finally, while of topic, I wanted to mention that on Wednesday at 10:00 a.m., as a member of the National Press Club's events committee, I will be moderating an NPC Newsmaker on youth sports and the risk from head injuries and concussions in the Bloomberg Room. US Soccer CEO Chris Moore, Mayo Clinic Neuropsychologist Jennifer Wethe and several others will join me the topic. The Mayo Clinic is also expected to a set of principles to help guide students and parents. Please join us.

Best,

Frank Maisano
(202) 828-5864
C. (202) 997-5932

FRANKLY SPOKEN

"Previously, New Source Review regularly discouraged companies from employing the latest energy-efficient equipment. Our updates will remove undue regulatory barriers, provide greater certainty to America's job creators and energy providers, and incentivize upgrades that will improve air quality."
EPA head Andrew Wheeler releasing a new NSR reform last week.
"Reports of the death of the Climate Solutions Caucus are greatly exaggerated."

The Citizens' Climate Lobby statement Wednesday morning after several members including Carlos Curbelo lost tight reelection races.

ON THE POD

Bracewell Wraps Up Mid-Term Elections – In addition to the publication of our 2018 Post Election Webinar audio, we have a new regular-format episode, which is now live on Apple Podcasts, SoundCloud, Stitcher, and Google Play Music. Josh, Liam, and Paul debrief on the political side of the Midterm election and what the results mean for the future of Washington.

FUN OPINIONS

Column: Climate Getting Too Divisive to Resolve – Our friend Amy Harder of Axios is talking about climate change and addressing its challenges again in her most recent column, which she says in getting too big and divisive to solve easily. She adds the math and politics are the key BIG problems. She also says to tune in Sunday at 6:30 p.m. for the next episode of Axios on HBO, which will include some focus on energy and climate. **MY NOTE**: I would also remind that despite not being in Paris, we have reduced our emissions by 28% against a 2005 baseline while other major emitting nations are well short of that.

IN THE NEWS

EPA Looks to Improve NSR Aggregation – EPA has released an improved New Source Review policy that will consider "substantially related" actions by emitting facilities as constituting one project for permitting purposes, which could exempt facilities' actions that increase emissions from NSR permitting if other actions reduce them. The policy published last Wednesday changes how EPA determines whether changes to power plants and other facilities -- like installing new equipment -- need to go through the NSR process. That process is an extensive analysis meant to limit emissions of air pollutants like nitrogen oxides and particulate matter.

Musical Committee Chairs in Senate – Our friends at POLITICO are reporting that if Sen. Nelson Loses his recount effort, Sen. Energy Ranking Member Maria Cantwell may move over to the Commerce Committee. While changes like this are not usual at the end of the Congress, it may set up a scenario where just re-elected Joe Manchin become the top Dem on the Committee. While enviro would go ballistic over that, POLITICO says they may try to encourage current Ag Chair Debbie Stabenow to move over. We'll see as the palace intrigue will continue as members come back to town this week.

Cheniere Lands Polish Oil/Gas Deal – Cheniere Energy and Polish Oil and Gas Company signed a 24-year deal Thursday to receive U.S. liquefied natural gas as Poland seeks to reduce dependence of Russia. More than half of Poland's gas comes from Russia's Gazprom under a long-term deal that expires in 2022. Energy Secretary Rick Perry attended the signing ceremony as part of his broader four-country trek to Central and Eastern Europe this week, which also includes bilateral dialogue on potential nuclear power and other partnerships.

Canada Signs Deal with NuScale – NuScale Power signed a memorandum of understanding with Ontario's public electricity generator, bringing NuScale closer to introducing its ground-breaking small modular reactor technology to Canadian customers. NuScale is currently working on a service agreement to submit a vendor application with Canadian regulators. NuScale's technology is already the world's first and only SMR to undergo design certification application review by the U.S. Nuclear Regulatory Commission. NRC is scheduled to complete NuScale's Design Certification application in September 2020. NuScale's first customer, Utah Associated Municipal Power Systems, is on track to deploy the first U.S. SMR plant in the mid-2020s.

Rig Report: Drilling Up – Oil Services leader Baker Hughes said U.S. drillers added 12 oil rigs to keep the rig count at its highest in over three years. Despite investors' concerns about trade disputes and lower economic growth's impact on fuel demand, the rig count ended the week at 886, well above the 738 active at this point last year.

New Head for NETL – DOE said Brian Anderson will be the new director of its National Energy Technology Laboratory starting tomorrow. Anderson is currently head of West Virginia University's Energy Institute. With Anderson's arrival, NETL's acting Director, Sean Plasynski, will become the lab's deputy director and chief operating officer. Anderson began his career at WVU in 2006 as an assistant professor in the department of chemical and biomedical engineering. Throughout his tenure at WVU, he became a recognized scientist and subject matter expert in natural gas hydrates, unconventional oil and gas development, and clean coal technologies. In 2014, Anderson founded and built the WVU Energy Institute which is the largest energy collaborative research organization at the university focused on advancing technology through research, development, and demonstration within the energy industry.

ON THE SCHEDULE THIS WEEK

Wood Stove Showcase Set – The 2018 Wood Stove Design Challenge is being held today and tomorrow on the National Mall. The event is a showcase and competition for advanced wood stoves with automated features and/or stoves that make electricity. Awards will be announcement tomorrow at 2:30 p.m. You can see info on the awards here and more info on details here.

US-Mexico Forum to Look at Trade Pact – The US-Mexico Chamber of Commerce is hosting the 4th North American Sustainable Economic Development Summit is being held today and tomorrow at the Four Seasons Hotel, Las Colinas in Irving, Texas. The event includes details of the newly-announced United States-Mexico-Canada Trade Agreement. Other topics in the agenda will be Mexico's presidential elections, and the country's future economy under the administration of Andres Manuel Lopez Obrador.

Coal Ash Group to Release Annual Survey – The American Coal Ash Association will release its annual Coal Ash Production & Use Survey results tomorrow at 9:30 a.m. in the National Press Club's Lisagor Room. Conducted since the early 1960s, the survey provides the most complete data available on the volume of coal ash materials that are produced and beneficially used in a variety of applications. ACAA officials will also discuss impacts of environmental regulation and changing electric utility markets on coal ash production and use. ACCA execs Thomas Adams and John Ward will present.

Newsmaker: NASA's 25-year Plan for Humans to Inhabit Mars – The National Press Club will host a Headliners press conference at 10:00 a.m. tomorrow featuring four presenters directly responsible for creating and implementing elements of a mission to Mars and serving a new vision of mankind as a visitor – then resident – of the red planet. Once limited to the imaginations of sci-fi enthusiasts, NASA now has mission-specific technology in development, and a hard deadline for humans landing on Mars following a series of robot landers that have mapped out the terrain and other features of what could soon be our new world – the latest is InSight, scheduled to land on Mars on November 26, and drill deeply into the Martian soil to deliver clues about the planet's core and interior structure. Speakers will include Astronaut Tom Jones, NASA Goddard chief scientist James Garvin, NASA Mars Exploration head Richard Davis and children's science author Janet Ivey.

Forum to Look at Nuclear Legislation – ClearPath, U.S. Nuclear Industry Council, Nuclear Innovation Alliance, Third Way and Atlantic Council host a discussion tomorrow at 2:00 p.m. on the Nuclear Energy Leadership Act. Speakers include

Idaho National Lab Director Mark Peters, NuScale Power Chief Strategy Officer Christopher Colbert, Pillsbury Law Senior Associate Anne Leidich and Sarah Ladislaw, director of the energy and national security program at the Center for Strategic and International Studies. Panelists will discuss a comprehensive blueprint for the U.S. to once again lead the world in next-generation nuclear power. The Nuclear Energy Leadership Act (NELA)addresses the lack of aggressive yet achievable milestones for U.S.-led advanced reactor technologies and of an overall long-term strategy for the direction of U.S. nuclear science and engineering research and development.

Forum Looks at Radioactive Waste – The Stimson Center will hold a forum tomorrow at 1:00 p.m. looking at a public discussion on social license to operate for radioactive waste. Disposal of radioactive waste remains a contentious issue around the world. Many would argue that it is almost impossible to gain a social license to operate (SLO) for the disposal of such a waste product. The discussion will share practical socio-psychological approaches to science and technology acceptance and their application to radioactive waste, investigate issues of procedural and distributive fairness, trust and perceptions of risk and benefits and implications of the socio-technical implications for policy and industry. Peta Ashworth at the University of Queensland will speak.

Webinar on Power Industry Set – POWER Magazine will hold a webinar tomorrow at 11:00 a.m. on "Eddy Current Testing and its role in reliable power generation. In North America alone, more than 7,000 outages per year are attributed to tube failures costing the industry hundreds of millions of dollars in lost production and repair. To help mitigate this problem, power plants have created protocols and procedures designed to locate and plug tubes on the verge of failure before they become an issue. Non-Destructive Testing is one tool helps to prevent forced outages by detecting various defects such as pitting, cracking, corrosion, erosion, grooving, steam impingement and tube-support fretting that cause tube failures.

AWEA Clean Energy Exec Summit Set – Tomorrow to Thursday at the Broadmoor in Colorado Springs (NICE!), the wind Industry hosts the first annual Clean Energy Executive Summit the event features leaders from the wind industry and across renewable energy sectors to plan for the future. With a focus on demand-driving policy, modernized market rules, cost saving innovations, and how we must work together, this one-of-a-kind event is step one in further advancing the clean energy boom.

GTM to Host Power, Renewables Summit – Greentech Media host a two-day summit tomorrow and Wednesday around financing strategies, business model shifts, demand and regulatory updates will reshape power markets over the next 10-to-20 years. The Power & Renewables Summit 2018 will gather industry views on how renewable integration, decarbonization, sector electrification and the growing need for increased capacity and flexibility are impacting electricity systems.

Schneider Electric to Host Innovation Summit – Schneider Electric hosts its Innovation Summit tomorrow and Wednesday in Atlanta to look at new digital technologies that are shaping the future of energy and automation. CNBC's Contessa Brewer, Schneider CEO Jean-Pascal Tricoire, and Georgia Power's Johnny Howze will be among the speakers.

Menezes, Smith Headline Atlantic Council LNG Forum – Tomorrow at 9:00 a.m., the Atlantic Council Global Energy Center will host a discussion about the evolving US LNG landscape. DOE Under Secretary Mark Menezes and former DOE official Christopher Smith, now at Cheniere Energy, will lead this discussion on the role of US LNG in bolstering European energy security, recent developments in US LNG, and the role of LNG in sustainability issues.

FERC's Glick to Headline Look at PJM States, Enviro Policy – The Great Plains Institute and Duke's Nicholas Institute for Environmental Policy Solutions host a forum tomorrow at 9:00 a.m. at the Monaco to look at challenges for environmental Policy in the PJM states. FERC Commissioner Rich Glick and former FERC Chair Norm Bay will be among the speakers.

NOAA Officials to Discuss Climate, Extreme Weather at C2ES Webinar – The Center for Climate and Energy Solutions (C2ES) hosts a webinar tomorrow at 1:00 p.m. that will explain the role of climate change in exacerbating extreme weather. The webinar will focus on observations of current climate change indicators, the economic impacts of recent

extreme weather events, and new scientific methods for understanding the role that climate change has in exacerbating extreme weather. NOAA's Derek Arndt and Adam Smith will lead the discussion.

WRI Looks at Climate Pledges – On Wednesday at 9:00 a.m., the World Resources Institute will host experts and thought leaders to discuss implications for policymakers and actors on the ground, both within the United States and globally, as the world looks to all actors to help reach our climate goals. Tailored to a U.S. and international policy audience, this event will feature key voices from coalitions representing regional governments, municipalities, and business leaders. Participants will highlight the critical role of subnational actors, while also providing a clear sense of challenges and opportunities moving forward. Former Climate negotiator Todd Stern, Canada's Rachel McCormick and several others will speak.

AEI to Look at Conservative Case for Carbon Tax – American Enterprise Institute will hold a discussion Wednesday at 3:30 p.m. looking at the conservative case for a carbon tax. In the debate over anthropogenic climate change, one important difference has emerged among self-described economic and political conservatives: Would a tax on greenhouse gas emissions, whether imposed by the US alone or by international agreement, further the goals of environmental improvement and enhanced economic growth? This debate has become more prominent recently, with formal proposals for such a tax presented in both detailed policy papers and proposed legislation. AEI hosts a panel that will offer sharply contrasting views, with the larger goal of moving the climate policy debate forward in a rigorous fashion.

Fed Land Officials Join PERC, Heritage for Management Panel – The Heritage Foundation and the Property and Environment Research Center will host a robust conversation on Wednesday at 3:30 p.m. looking at where federal land management policy is going and creative policy ideas for the future. Among the speakers will be Heritage's Nick Loris and group of officials, including– National Park Service Deputy Director, Deputy Assistant Secretary for Land & Mineral Management Casey Hammond, acting Deputy Chief of the U.S. Forest Service Chris French and Fish and Wildlife Service's Marshall Critchfield.

Congress Returns for Post-Election Congressional Session – Wednesday November 14th

Senate Energy to Hear from FERC, DOE, NPS Nominees – On Thursday, the Senate Energy and Natural Resources Committee will hear from FERC nominee Bernard McNamee, Rita Baranwal to head the Department of Energy's Office of Nuclear Energy and Ray Vela to be National Park Service Director. Baranwal has extensive and senior nuclear policy experience includes as director of the Gateway for Acceleration Innovation in Nuclear effort housed at Idaho National Laboratory since August 2016. She was previously director of technology development and core engineering/nuclear fuel at Westinghouse Electric and a manager at Bettis Atomic Power Laboratory.

FERC Meeting Set – The Federal Energy Regulatory Commission will hold its monthly open meeting on Thursday at 10:00 a.m.

House Resources to Mark Up Bills – Thursday at 9:30 a.m.

USEA, Canada to Host Energy Efficiency Forum – The US Energy Assn is hosting the inaugural Energy Efficiency and Supply Forum on Thursday at 9:00 a.m. at the Embassy of Canada. The event will explore the dimensions of how technology to improve energy efficiency in production, development and delivery, including electricity delivery, go hand in hand with energy supply and a fully integrated energy system. Battery storage, distributed generation, smart microgrids, customers as 'prosumers,' the role of electric vehicles, algae R&D are all topics resonating across the energy sector. Distinguished guests will meet to explore the future implications and practical applications of these topics and more. Special Keynote Address will be from Senate Energy Chair Lisa Murkowski.

House Oversight to Look at Forest Service Misconduct – The House Oversight and Government Reform will hold a hearing examining misconduct and retaliation at the U.S. Forest Service at 10:00 a.m., Thursday.

Senate Environment Looks at Wildlife Conservation – The Senate Environment Committee holds a hearing at 10:00 a.m. Thursday on funding needs for wildlife conservation, recovery and management.

Forum to Look at Coal Protests – On Thursday at 12:30 p.m., Georgetown's Mortara Center for International Studies holds an Energy and Climate Policy Research Seminar discussion with Professor Jennifer Hadden from the University of Maryland exploring variations in global protests against proposed coal-fired power plants.

Forum to Look at Clean Energy in Next Congress – The American Council on Renewable Energy, Solar Energy Industries Association, and think tank Energy Innovation will host a lunchtime panel discussion on Friday at 11:45 a.m. that will focus on the outlook for clean energy in the White House, Congress, and state capitals following the 2018 midterm elections. With control of the U.S. Senate and House of Representatives, as well as 36 governors' offices and dozens of state legislatures up for grabs, clean energy policy could dramatically shift leading into the 2020 presidential election. Experts with decades of experience in clean energy technology and policy development at the federal and state levels will address prospects for a range of relevant policies in the next Congress. They will also discuss which states could emerge as clean energy leaders with a shift in governorships, and which promising, pro-renewables policies might be in play in rural states. The event will be moderated by WSJ's Tim Puko and the panel features SEIA's Abby Hopper, ACORE's Greg Wetstone and EI's Hal Harvey.

CRS Expert to Address Energy Economists – The US Energy Economists in the National Capital Area will their November luncheon on Friday at Noon to look at on cybersecurity issues surrounding the electricity grid. The speaker will be Richard Campbell, a Specialist in Energy Policy for the Congressional Research Service, where he focuses on issues related to the electric power sector and energy technologies. Mr. Campbell has written on cybersecurity and the grid for CRS and has testified on the topic before the House Committee on Transportation and Infrastructure.

IN THE FUTURE

Brookings to Host Sustainable Energy Exec – Next Monday, the Cross-Brookings Initiative on Energy and Climate will host Rachel Kyte, CEO of Sustainable Energy for All, in a discussion facilitated by initiative Co-Chair David G. Victor. The pair will discuss how to provide energy services to the world's poorest and how to encourage the development of greener and more efficient energy systems.

THANKSGIVING DAY – November 22nd

Wilson to Look at Global Water Issues – On November 28th, the Wilson Center along with US AID and the World Wildlife Federation will host a forum taking stock on the 1st year of the 1st U.S. Global Water Strategy. The forum will explore new research and practice on water, peace, and conflict; and highlight the centrality of water to global prosperity. Speakers will include Sen. Chris Coons and many more.

Forum to Talk Private-Public Nuclear Partnerships – DOE and X-Energy are hosting am "Atomic Wings Lunch & Learn" on November 28th at 11:45 a.m. looking at Public-Private Partnerships in Nuclear Energy. Speakers include Sen. Todd Young (R-Ind.), Rep. Chuck Fleischmann (R-Tenn.), Office of Nuclear Energy Deputy Assistant Sec. Shane Johnson, Georgia Public Service Commissioner Tim Echols and ClearPath Executive Director Rich Powell.

EPA RFS Standard on Track for Nov 30 – The EPA is expected to release its 2019 biofuel blending mandate for the Renewable Fuel Standard by November 30th. EPA recently sent the RVOs to the White House for review.

COP 24 Headed to Poland – The 24th Conference of the Parties to the United Nations Framework Convention on Climate Change will be held in Katowice, Poland in December 3rd to the 14th.

Southern Holiday Party Set – The Southern Company will host its annual holiday party on December 5th at Union Station.

Cato to Look at Jones Act –The Cato Institute is holding a conference on the Jones Act on Thursday, December 6th. The event will try to charting a new course after a century of failure. For nearly 100 years the Jones Act has restricted the transportation of cargo between two points in the United States to ships that are U.S.-built, crewed, owned, and flagged. While failing to provide its promised benefits, the law has imposed a huge economic burden that manifests itself in various ways, ranging from higher transportation costs to increased traffic and pollution. This full-day conference examines these costs in greater detail, discusses the validity of the Jones Act's national security argument, and evaluates options for reform.

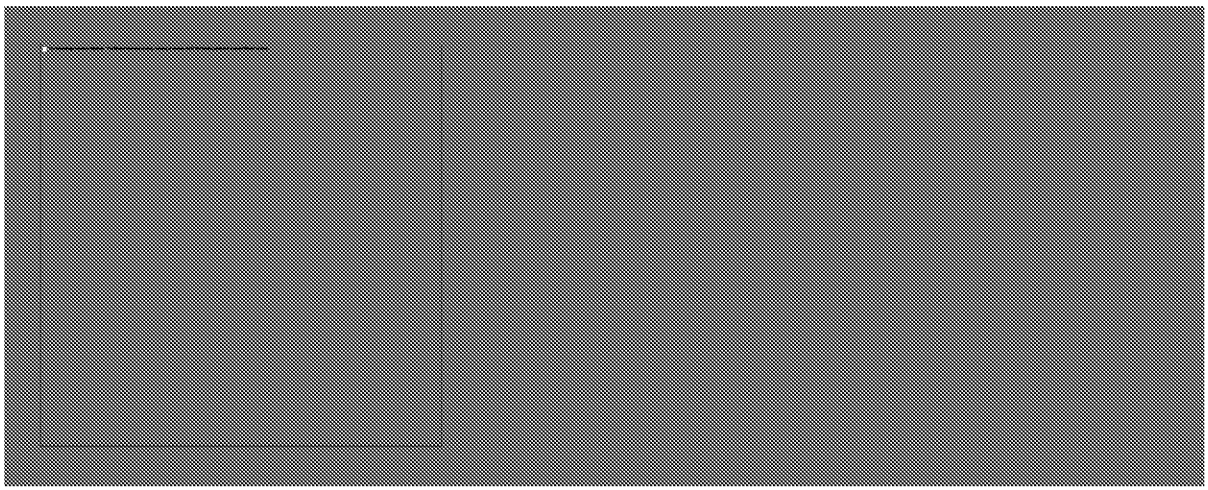
Low Carbon Fuels Workshop Set for SF – The Oil Price Information Service (OPIS) holds its Low Carbon Fuels and Carbon Markets Workshop next month on December 12-14 in San Francisco.

State of the Energy Industry Event Set – Mark your calendars for January 3rd when API will conduct its annual State of the Energy Industry event at the Reagan International Trade Center.

FRANK MAISANO
Senior Principal
Ext. 5864
Policy Resolution Group

Message

From: Institute for Energy Research [info@ierdc.org]
Sent: 12/13/2018 2:48:16 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: U.S. Oil Production Reaches Record High



SURGING

U.S. oil production was estimated at 11.7 million barrels a day during the week ending November 16. For perspective, the increase is almost equivalent to all of Mexico's production in 2017.

In less than a decade, U.S. companies have drilled 114,000 wells in the Permian Basin of Texas alone and many of them could turn a profit with crude prices as low as $30 a barrel.

Read a full summary of the record setting events here.

From The Studios

What Does "Trumponomics" mean for American Energy?

The team sits down with Stephen Moore, a distinguished visiting fellow at the Heritage Foundation and former economic advisor to President Donald Trump, to discuss his new book as well as the Trump administration's plans and goals for American energy. Listen now to *Plugged In* episode #12: Stephen Moore on trade, energy, and his new book *Trumponomics*

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- New Paper Allays Fears of Resource Depletion
- Macron's Carbon Tax Disaster
- China Has the World's Largest Electric Vehicle Fleet

THE WIRE

IER News Highlights

- IER Senior Vice President of Policy Dan Kish quoted in The Daily Caller on U.S. oil production
- IER Senior Economist Bob Murphy quoted in *The Washington Examiner* on the National Climate Assessment

THE BUZZ

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- Over 350 interactions on Tweets
- Over 4,400 interactions on Facebook posts

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THE BREAKER

"The bottom line is this: economic freedom leads to prosperity, economic growth, and technological innovation. And it's these three things: wealth, growth and technology, which allows humans to thrive on planet Earth, not $240 per gallon fuel taxes imposed by an elite that cares not for the masses."

– The Honorable Chuck DeVore, Vice President of National Initiatives at the Texas Public Policy Foundation

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Message

From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 2/15/2019 2:05:35 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: So look at me now, I'm just makin' my play.

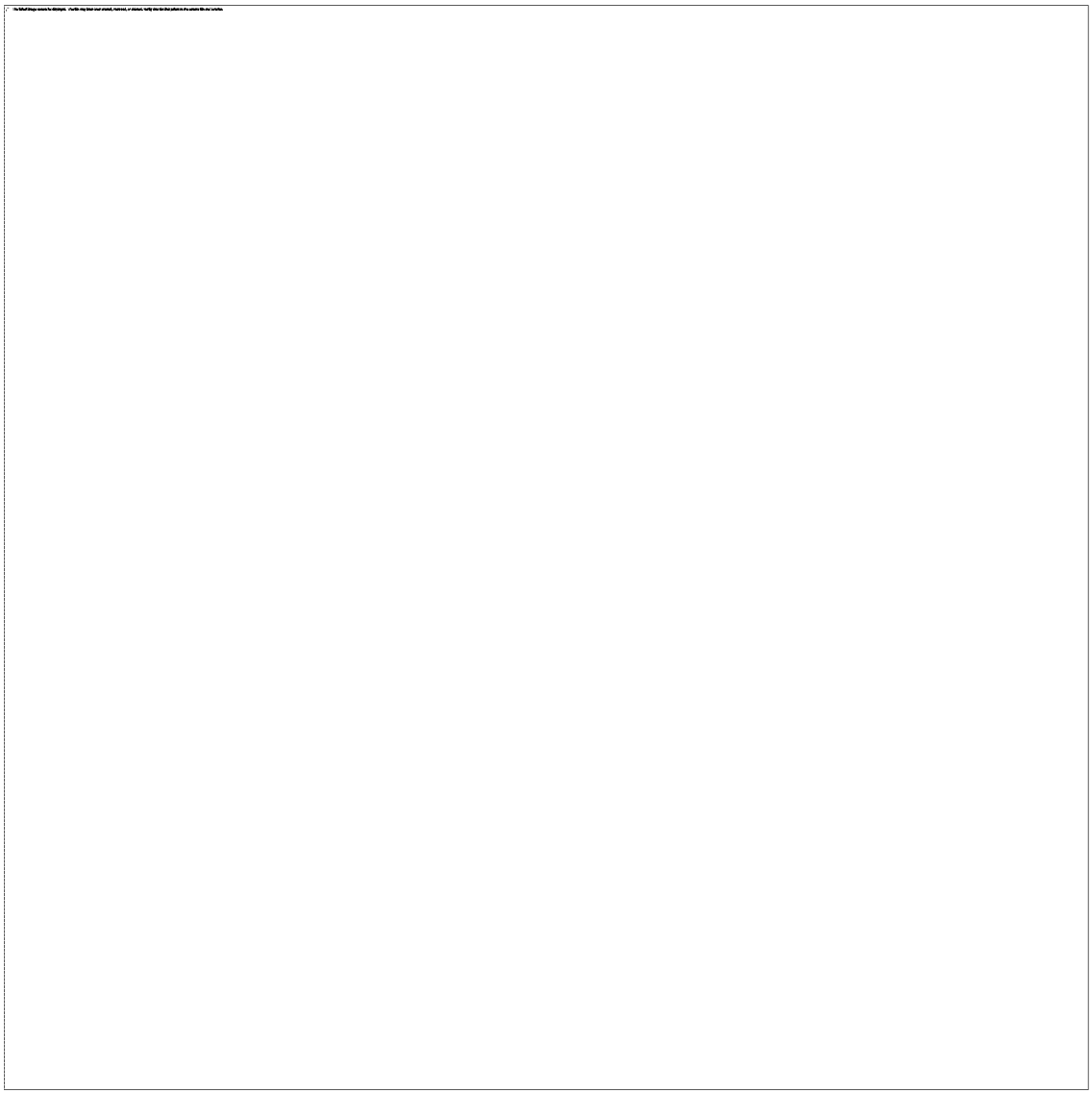
View this email in your browser

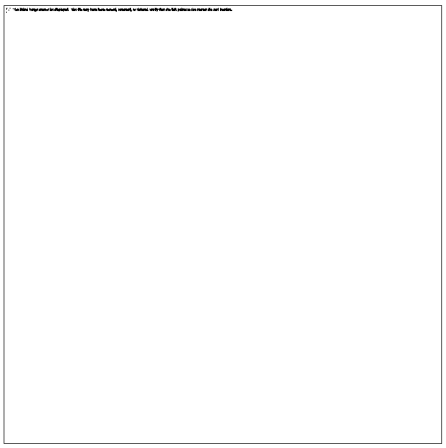
MORNING ENERGY NEWS | 2.15.2019

Subscribe Now

Don't try to push your luck, just get out of my way. 'Cause I'm back.

Houston Chronicle (2/11/19) reports: "Crude oil production in Texas has beaten a previous record set in the 1970s, a new report from the Texas Independent Producers Royalty Owners Association stated Texas oil wells produced more than 1.54 billion barrels of crude in 2018, beating the previous record of 1.28 billion barrels set in 1973, TIPRO reported in its annual 'State of Energy Report' early Monday morning. Natural gas production also grew, reaching 8.8 trillion cubic feet in 2018, the report stated."





"If the Green New Deal becomes a reality, the urban–rural divide will only grow more stark. And rural Americans will be among those paying the highest prices."

– Robert Bryce, Manhattan Institute

Green New Deal, Five Year Plan, Great Leap Forward...lots of options!

New York Times (2/14/19) op-ed: "The Green New Deal isn't the only approach, of course, but its broad ambitions mark out the ground where future climate fights will happen. Because reshaping our environmental impact means reworking our economy, there will inevitably be competing visions about who deserves to benefit and what kind of economy we should build. Centrist proposals will concentrate on promoting investment in new technologies, with

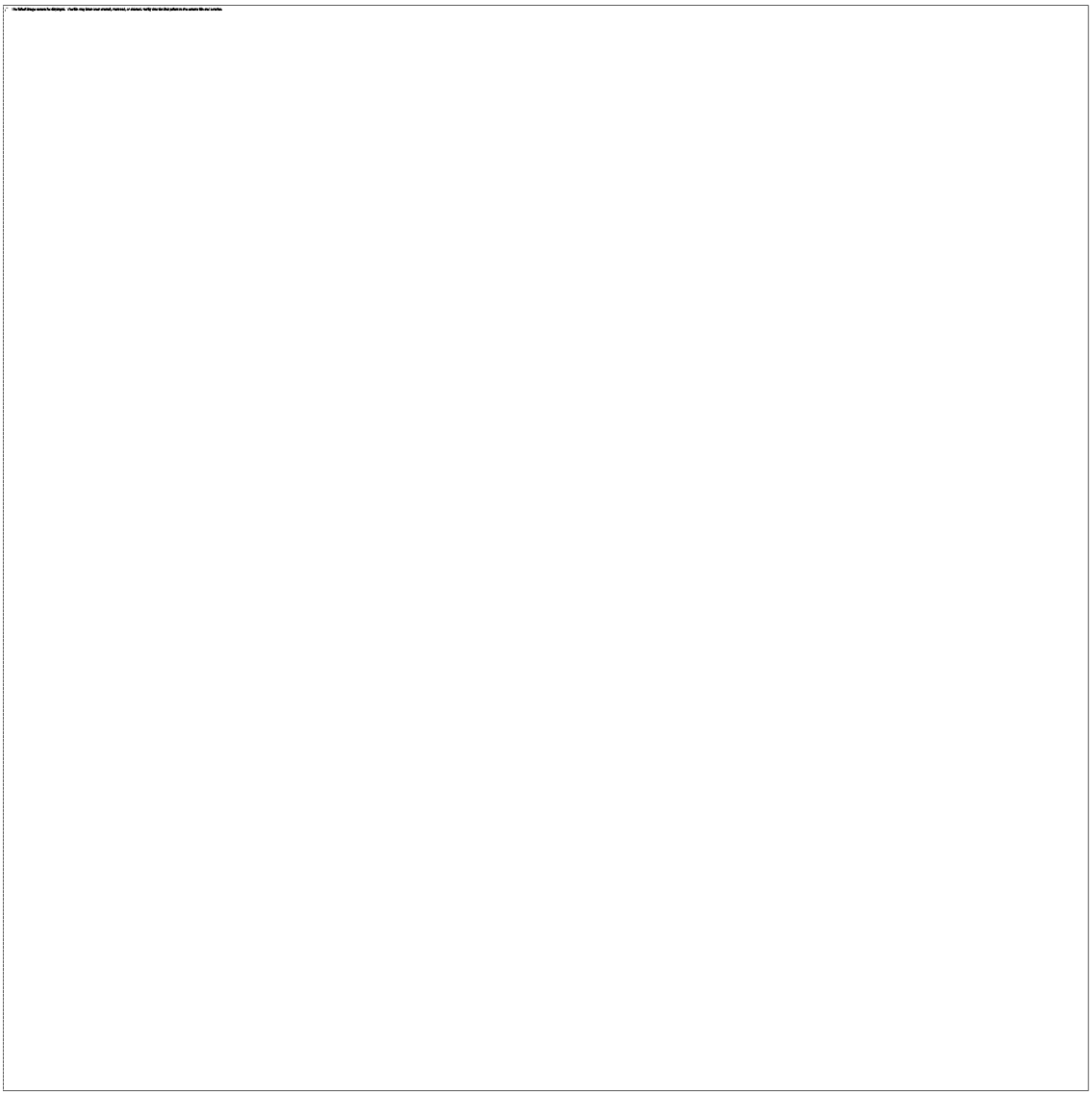
profits going, pharma-style, to private researchers and manufacturers. If Trumpist nationalism outgrows its climate denialism but survives to fight again, it will double down on supporting national energy industries and denying the ethical responsibilities of global interdependence by building border walls against climate refugees. To the left of the Green New Deal, there will be louder calls to nationalize fossil fuels in order to leave them in the ground. (A carbon tax would be compatible with any of these visions, depending on who paid it and how the revenues were spent.)"

Like a cancer.

Climate Change News (2/14/19) reports: "The meeting between Corbyn and Zack Exley – who helped US congresswoman Alexandria Ocasio-Cortez draft a resolution for a massive green economic stimulus – was also attended by shadow chancellor John McDonnell and shadow treasury minister for sustainable economics Clive Lewis. Exley's UK visit comes the week after Ocasio-Cortez proposed a Green New Deal resolution to Congress. Her plan aims to virtually eliminate US greenhouse gas pollution inside ten years. The deal was backed by most Democratic presidential candidates and sparked calls within UK Labour for the party to develop a similarly ambitious project."

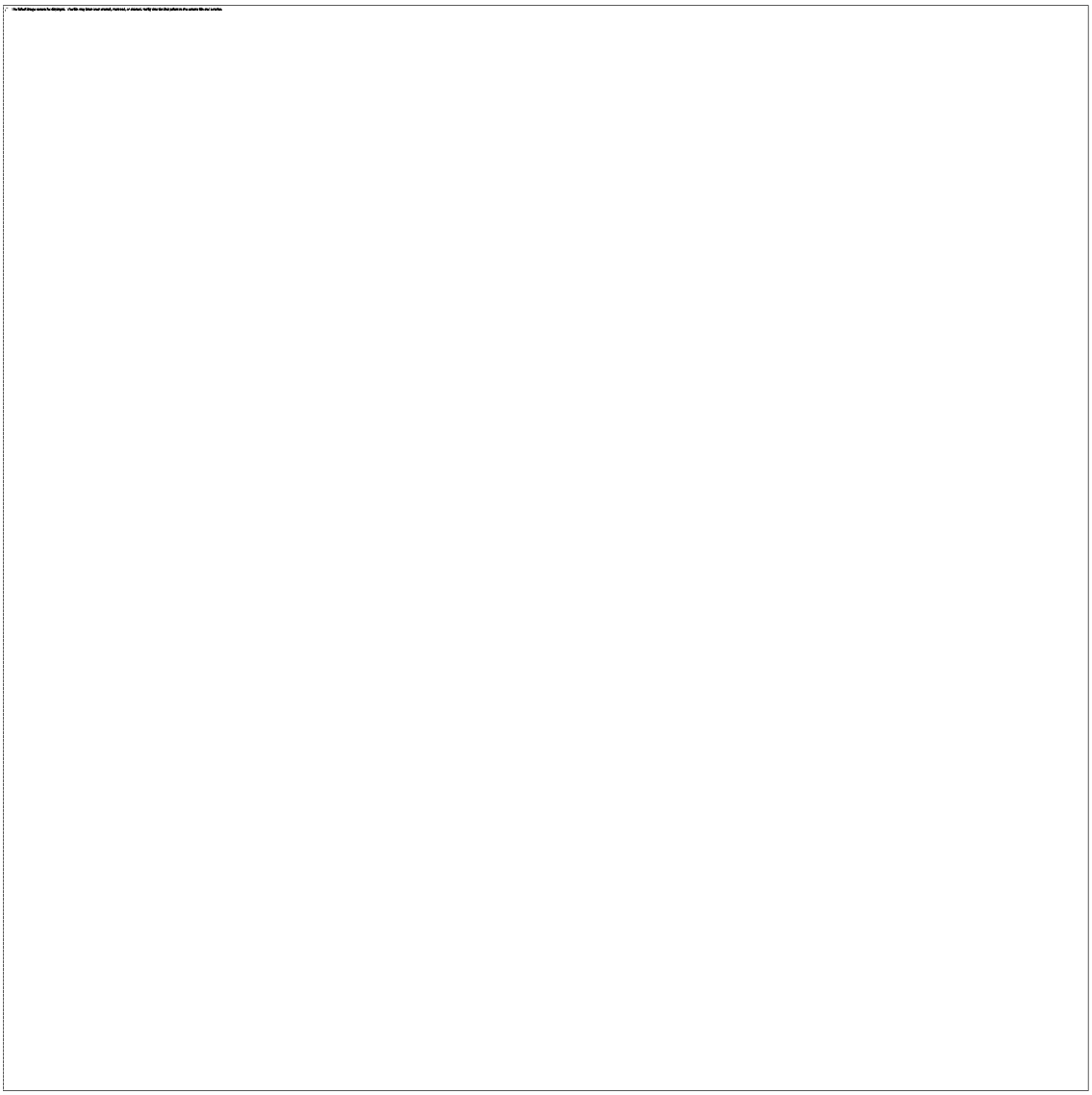
The gravy train loses steam.

L.A. Times (2/15/19) reports: "It was billed as the most ambitious public works project since the transcontinental railroad opened up the West. The high-speed rail network would transform California — cleaner air, less congested freeways and airports, and more limited suburban sprawl with a whole new style of housing around rail stops. 'Fresno could become a bedroom community of the Silicon Valley,' the California High-Speed Rail Authority said a month before voters approved Proposition 1A in November 2008. Yet bite after bite, huge cost overruns, mismanagement, political concessions and delays ate away at the sleek and soaring vision of a bullet train linking San Francisco to San Diego. A project meant to drive home California's role as the high-tech vanguard of the nation was looking more and more like a pepped-up Amtrak route through the Central Valley."


The Actual Image may be different. Profile may differ from what shown, material, or design, verify the item before the order.

Êtes-vous prêt pour les Gilets Jaunes Québécois?

Twitter (2/12/19) :


The Adobe Image cannot be displayed. A file may have moved, renamed, or deleted. Verify that the file and path to the source file are valid.

Asunder Down Under.

Townhall (2/14/19) op-ed: "Every year, the American public hears new proposals for a tax on carbon dioxide, peddled via fear-mongering and 'Chicken Little' style climate predictions. With even some 'conservative' and 'free-market' groups arguing that a carbon tax is necessary, it is important to understand the devastating effects that these policies have had on taxpayers and consumers in countries that already have carbon taxes...I have seen this all happen before. Despite having the world's richest deposits of coal and uranium, my native Australia has the highest power prices in the world as a result of strict environmental mandates...Australia's aluminum smelting industry was forced to drastically cut production last year due to electricity price hikes — placing thousands of jobs at risk. Boyne Smelters, a subsidiary of Rio Tinto, was forced to shed 100 jobs. Even an industry not normally thought of as energy intensive – packaging – has been hit, with one of Australia's leading manufacturers citing the cost of energy in Australia doubling in considering moving all production offshore."

***If you oppose a carbon tax, please** contact us and take a stand.*

Tom Pyle, American Energy Alliance
Myron Ebell, Competitive Enterprise Institute
Phil Kerpen, American Commitment
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Grover Norquist, Americans for Tax Reform
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Craig Richardson, E&E Legal
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jason Hayes, Mackinac Center
David Williams, Taxpayers Protection Alliance
Paul Gessing, Rio Grande Foundation
Seton Motley, Less Government
Nathan Nascimento, Freedom Partners Chamber of Commerce
Isaac Orr, Center of the American Experiment
John Droz, Alliance for Wise Energy Decisions
Hon. Tim Huelskamp, Ph.D., The Heartland Institute

Energy Markets

WTI Crude Oil: ↑ $54.69
Natural Gas: ↑ $2.58
Gasoline: ↑ $2.30
Diesel: $2.92
Heating Oil: ↑ $198.20
Brent Crude Oil: ↑ $64.90
US Rig Count: ↑ 1078

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Message

From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 2/14/2019 3:51:35 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Twelve years

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In the Pipeline

MORNING ENERGY NEWS | 2.14.2019

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Ed Markey believes the time to vote on an urgently necessary climate change resolution is...later.

Reason (2/13/19) blog: "Last week, when Rep. Alexandria Ocasio-Cortez (D-N.Y.) and Sen. Edward Markey (D-Mass.) introduced the Green New Deal, a resolution calling for a massive, government-driven overhaul of the U.S. economy in order to address climate change, Markey tweeted that the plan's 'transformative legislative goals are what is needed to address the generational challenge of climate change.' In an accompanying press release, he said climate change should be 'the highest of Congressional priorities,' and he stressed that time was of the essence, saying 'we need bold action to avoid the worst impacts of climate change, and we may have as few as 12 years to achieve it.' Apparently, however, such action can wait a little longer. Yesterday, Senate Majority Leader Mitch McConnell (R-Ky.) indicated that he would soon hold a vote on the plan, which has been endorsed by a number of the

Democrats' 2020 presidential contenders in the Senate, including Sens. Kamala Harris (Ca.), Cory Booker (N.J.), and Kirsten Gillibrand (N.Y.). The idea, McConnell said, would be to 'give everybody an opportunity to go on record and see how they feel about the Green New Deal.'"

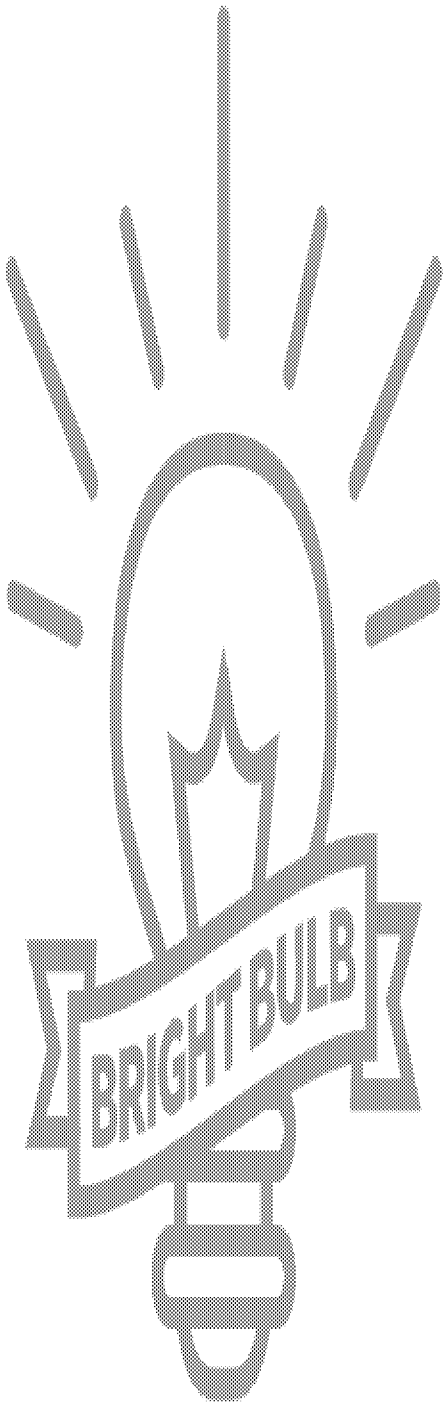
Ed Markey @SenMarkey · Feb 12, 2019

Don't let Mitch McConnell fool you: this is nothing but an attempt to sabotage the movement we are building. He wants to silence your voice so Republicans don't have to explain why they are climate change deniers. McConnell wants this to be the end, this is just the beginning.

Ed Markey
@SenMarkey

This isn't a new Republican trick. By rushing a vote on the #GreenNewDeal resolution, Republicans want to avoid a true national debate & kill our efforts to organize. We're having the first national conversation on climate change in a decade. We can't let Republicans sabotage it.

1,432 5:02 PM - Feb 12, 2019

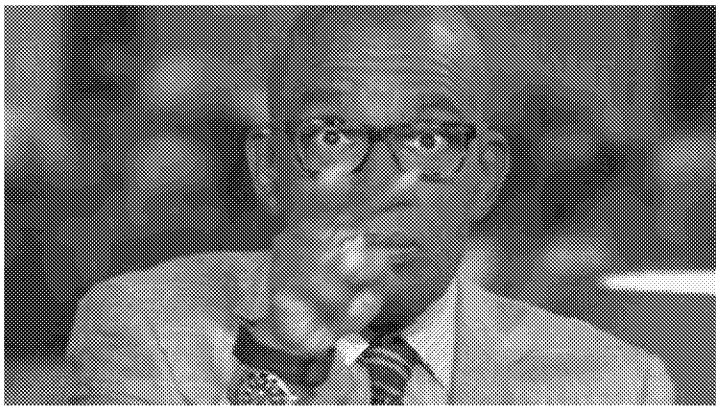


"The best way to reduce global greenhouse gases is for the U.S. to produce more of our domestic energy, not less. We have very cheap and abundant natural gas (thanks to fracking), and we should export it all over the world. The U.S. has reduced carbon emissions more than any other nation not because of regulations or green-energy subsidies but because of shale gas. Let's sell it to every corner of the globe, get rich and save the planet."

– Stephen Moore, The Heritage Foundation

Murkowski watch.

Washington Examiner (2/13/19) reports: "Sen. Lisa Murkowski, R-Alaska, said Wednesday the push for a 'Green New Deal' could provide an opportunity for her to revive a comprehensive energy bill she co-authored that would be the first update to the country's energy policies from Congress in a decade. A version of a comprehensive energy bill she co-authored with Sen. Maria Cantwell, D-Wash., passed out of the Senate in 2016 by a 85-12 vote but failed to advance in the House. The legislation would boost energy efficiency and improve land management, infrastructure, and cybersecurity of the energy system. It aimed to increase U.S. shale gas exports by speeding up the permitting process for liquefied natural gas export facilities, invest in research for industrial-scale batteries, and improve the efficiency of commercial buildings and homes."



Bill de Blasio's media circus is coming to an end.

Townhall (2/13/19) op-ed: "This week may well mark the last hurrah for both a rumored run for the presidency by New York City Mayor Bill de Blasio and his high-profile lawsuit against five energy producers. Last January, New York City joined several other municipalities in filing lawsuits against major energy companies BP, Chevron, ConocoPhillips, Exxon Mobil and Royal Dutch Shell, attempting to hold them solely responsible not only for damages alleged to have occurred due to climate change but for damages yet to happen. It would have been a sweet double play for de Blasio: A potentially huge damages award would backfill his fiscal mismanagement problems while making him the hero of a powerful national environmental base from which he could

springboard into a 2020 quest for the White House. Those dreams could all come to an end soon as lawyers debate over procedural matters in the next round of this baseless lawsuit. To date, none of the climate change lawsuits filed in a handful of cities have seen success. Skeptical judges across the country have mostly dismissed these lawsuits for what they are – shameless efforts to shakedown energy companies and for using the wrong venue to try to address a complex issue such as global climate change."

It just keeps getting better and better.

The Hill (2/12/19) reports: "U.S. oil production is anticipated to break records in the next two years — and prices are primed to increase slightly, according to an energy study released Tuesday. The Energy Information Administration (EIA) said Tuesday that crude oil production is expected to rise to an average of 12.4 million barrels a day in 2019 and 13.2 million barrels per day in 2020. That's up from January's average of 12 million barrels a day, an increase of 90,000 barrels a day from December. The expected increases will come from the Permian region of Texas and New Mexico, according to EIA. The U.S. last September surpassed Russia and Saudi Arabia as the top crude oil producer."

More Democratic governors contemplate economic suicide.

Climate Wire (2/13/19) reports: "The U.S. Climate Alliance is en vogue among America's new crop of Democratic governors. Illinois, Michigan and New Mexico have all joined the alliance in the last month. Wisconsin joined its ranks yesterday, bringing the total number of states committed to the targets of the Paris climate accord to 21. The question facing the newly minted climate states is whether their governors can actually cut emissions."

Energy Markets

WTI Crude Oil: ↑ $53.92

Natural Gas: ↑ $2.60

Gasoline: ↑ $2.28

Diesel: ↑ $2.91

Heating Oil: ↑ $195.60

Brent Crude Oil: ↑ $64.12

US Rig Count: ↓ 1078

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Message

From: Ward, Hillary [Ward.Hillary@epa.gov]
Sent: 2/14/2019 1:44:26 PM
To: OAR Briefings [OAR_Briefings@epa.gov]
CC: McKinney, Voronina [mckinney.voronina@epa.gov]; Koerber, Mike [Koerber.Mike@epa.gov]
Subject: RE: Materials: NAAQS Update Meeting
Attachments: Wehrum benefits briefing November 2018 (Part 3) Final.pptx

Please see the attached supplemental document for the following meeting:

2/14/19, 9:15-10:00, NAAQS Update Meeting

Note: These slides were presented to Bill in November. We do not expect to need to go through these again today in detail, but are providing them as a reference.

Hillary Ward
USEPA, Office of Air Quality Planning and Standards
(919)541-3154

From: Ward, Hillary
Sent: Wednesday, February 13, 2019 3:52 PM
To: OAR Briefings <OAR_Briefings@epa.gov>
Cc: McKinney, Voronina <mckinney.voronina@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: Materials: NAAQS Update Meeting

Please see the attached materials for the following meeting:
2/14/19, 9:15-10:00, NAAQS Update Meeting

Regards,

Hillary Ward
USEPA, Office of Air Quality Planning and Standards
(919)541-3154

Message

From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 5/10/2019 1:15:29 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: 'Merica. With an M.

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MORNING ENERGY NEWS | 5.10.2019

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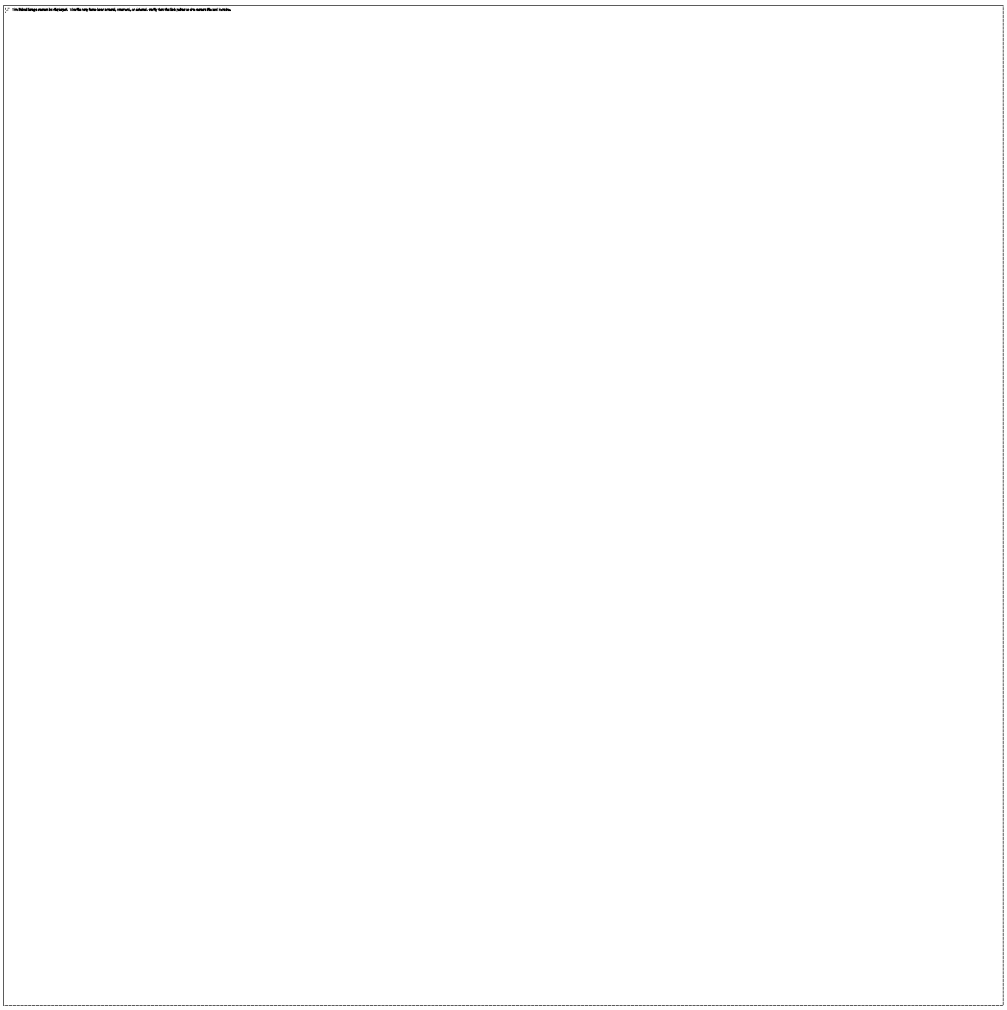
Light it up!

E&E News (5/7/19) reports: "The Trump administration plans to reignite Fourth of July fireworks over Mount Rushmore National Memorial, nearly a decade after the last displays burst over the South Dakota landmark over concerns about potential forest fires. The National Park Service suspended fireworks shows at the site in 2009, citing deteriorating forest conditions due to a mountain pine beetle infestation in the area and potential fire danger. The agency formally ended the practice in 2011, which officials described at the time as the 'prudent course of action.' But South Dakota Gov. Kristi Noem (R) revealed today that the Interior Department and state officials have spent 'several months' in discussions about how to restart the fireworks exhibition for the holiday. 'We are excited and honored to see fireworks return to our nation's Shrine of Democracy,' Noem said in a statement. In a post on Twitter, Noem thanked both Interior Secretary David Bernhardt and President Trump, writing: 'Let's Make Fireworks Great Again!!'"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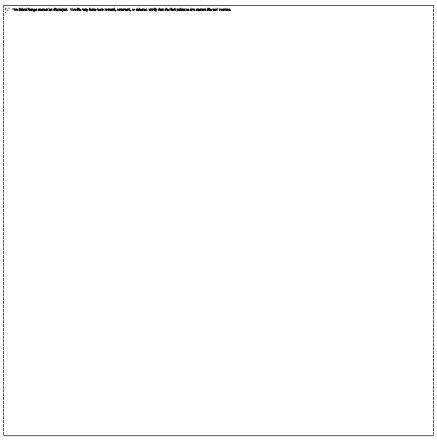


"No bags whatsoever. No single-use plastic, no paper."

– New Jersey State Sen. Bob Smith

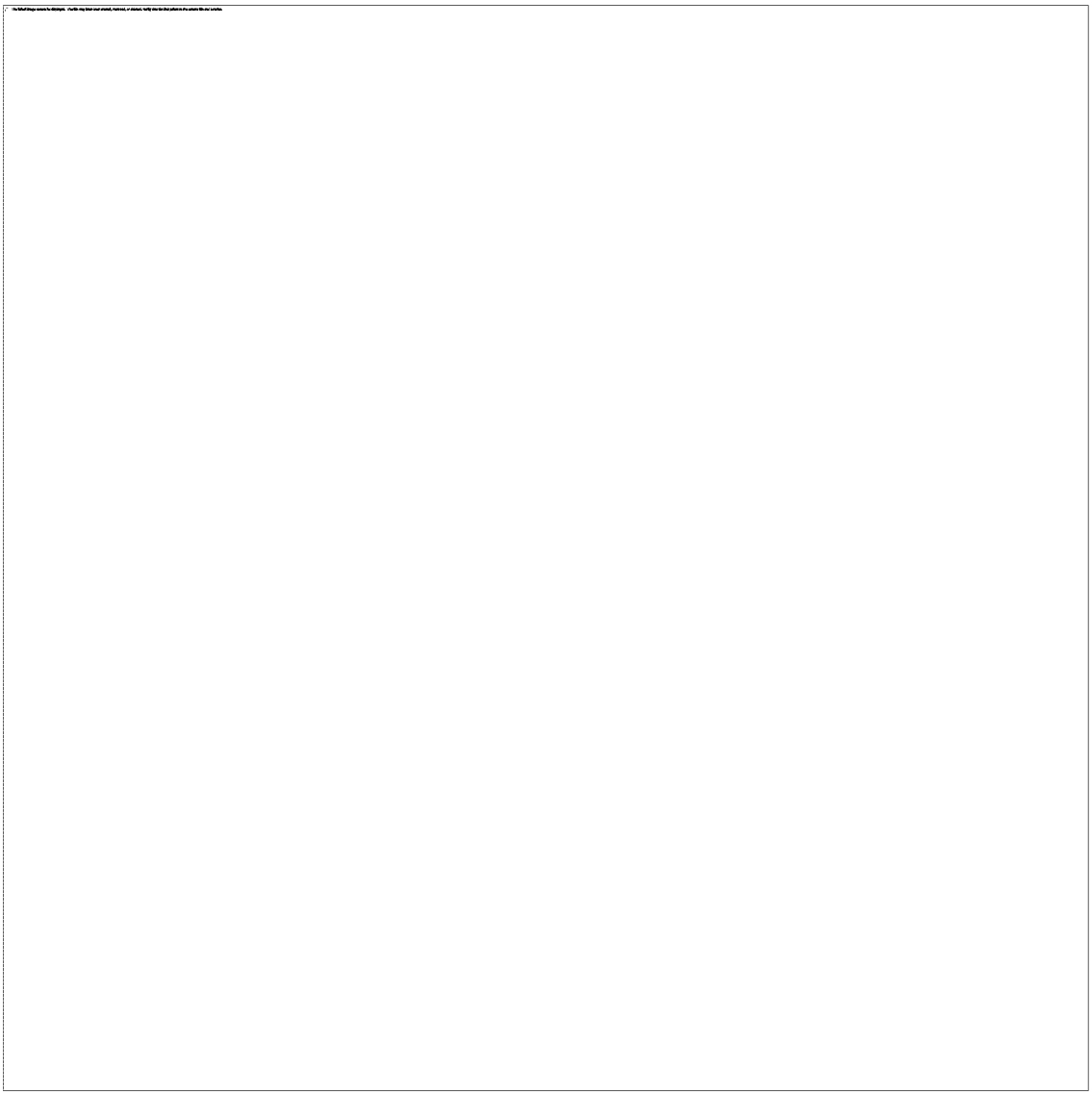
End it. Don't extend it.

E&E News (5/9/19) reports: "A coalition of 34 free-market groups today urged Congress not to extend the electric vehicle tax credit. In a letter, the groups argued that the EV tax credit represents a needless government handout to wealthy Americans, echoing a common conservative refrain. 'Subsidies for electric vehicles overwhelmingly benefit the rich,' the letter says. 'A recent study found that electric vehicle tax credits were claimed by households with an adjusted gross income of more than $100,000 a year. It makes no sense for the

federal government to subsidize the purchases of wealthy individuals.' The groups went on to quote Treasury Secretary Steve Mnuchin, who famously quipped, 'I own a Tesla, and I didn't need the $7,500 tax credit.'"

Well, aside from the manufacturing, shipping, and electricity generation...

Bird Scooters (5/9/19) marketing copy: "Introducing the very first Bird you can own. Choose from three unique colors for every kind of joy ride. Leave traffic behind and give your commute a higher purpose with zero carbon emissions."


The Rehab Image scanner has detected a potential problem with this page. It may have been over scanned, mutilated, or damaged, causing some data loss or distortion in the scanned file. Rescan if necessary.

Eat your heart out, Gavin.

The Hill (5/9/19) reports: "The Trump administration moved forward Thursday with its plan to open up hundreds of thousands of acres on California's Central Coast to oil and gas drilling. The effort comes despite opposition from Democratic officials in the Golden State, who have starkly criticized the plan. The Bureau of Land Management (BLM) issued its final proposal as part of the administration's 'energy independence' push on Thursday. It would open up 725,500 acres of land across eleven counties in California to oil and gas lease sales. The counties affected include Monterey, Fresno and Santa Cruz. The BLM hailed the proposal as a move that would strengthen U.S. energy independence."

We literally never have had cleaner air.

Salt Lake Tribune (5/8/19) reports: "Between Tuesday and Wednesday, a campaign calling itself Clean the Darn Air held a series of town halls throughout Utah as one of several legally required steps toward placing the question of a carbon tax on the 2020 ballot. And while their Salt Lake City event — held Wednesday at the Anderson-Foothill library branch — drew a small group of only four attendees, it still produced a range of feedback questioning the

specific structure of Clean the Darn Air's proposal, the validity of the scientific consensus on climate change, and whether Utah has the political appetite for placing a progressive, climate-conscious price tag on carbon emissions."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance

Myron Ebell, Competitive Enterprise Institute

Phil Kerpen, American Commitment

Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity

Grover Norquist, Americans for Tax Reform

George Landrith, Frontiers of Freedom

Thomas A. Schatz, Citizens Against Government Waste

Richard Manning, Americans for Limited Government

Adam Brandon, FreedomWorks

Craig Richardson, E&E Legal

Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute

Jason Hayes, Mackinac Center

David Williams, Taxpayers Protection Alliance

Paul Gessing, Rio Grande Foundation

Seton Motley, Less Government

Nathan Nascimento, Freedom Partners Chamber of Commerce

Isaac Orr, Center of the American Experiment

David T. Stevenson, Caesar Rodney Institute

John Droz, Alliance for Wise Energy Decisions
Hon. Tim Huelskamp, Ph.D., The Heartland Institute
Mark Mathis, Clear Energy Alliance

Energy Markets

WTI Crude Oil: ↓ $62.08
Natural Gas: ↓ $2.58
Gasoline: $2.88
Diesel: $3.10
Heating Oil: ↓ $205.64
Brent Crude Oil: ↓ $70.79
US Rig Count: ↓ 1036

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Message

From: Kirby, Kevin [KIRBY.KEVIN@EPA.GOV]
Sent: 12/12/2018 3:40:57 PM
To: Woods, Clint [woods.clint@epa.gov]
CC: Shoaff, John [Shoaff.John@epa.gov]
Subject: RE: Request for Stay of Review of RFR for Chloroprene, RFC # 17002
Attachments: IQG Overview_ATRA_12112018.pptx

As a follow-up for information regarding the background and framing of EPA's Information Quality Guidelines, here's an overview I prepared for the Air Toxics Risk Assessment (ATRA) monthly call…
Kevin

From: Kirby, Kevin
Sent: Tuesday, December 11, 2018 12:41 PM
To: Woods, Clint <woods.Clint@epa.gov>
Cc: Shoaff, John <Shoaff.John@epa.gov>
Subject: RE: Request for Stay of Review of RFR for Chloroprene, RFC # 17002

Hello Clint,
Thanks for the follow-up!

Deliberative Process / Ex. 5

Kevin

Kevin J. Kirby
Enterprise Data Architect
US Environmental Protection Agency

OMS/OEIP/EQMD
202 566-1656 desk

From: Woods, Clint
Sent: Friday, December 7, 2018 10:26 AM
To: Kirby, Kevin <KIRBY.KEVIN@EPA.GOV>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Dunlap, David <dunlap.david@epa.gov>
Subject: RE: Request for Stay of Review of RFR for Chloroprene, RFC # 17002

Kevin,

Just wanted to check in on this front – Thanks!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Woods, Clint
Sent: Monday, December 3, 2018 10:34 AM
To: Kirby, Kevin <KIRBY.KEVIN@EPA.GOV>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Dunlap, David <dunlap.david@epa.gov>
Subject: Fwd: Request for Stay of Review of RFR for Chloroprene, RFC # 17002

Kevin,

Has EPA or Deputy Administrator Darwin formally responded to this request? Any chance we might be able to discuss this week? Thanks!

Clint

From: Holden, Bob
Sent: Friday, October 12, 2018 3:36 PM
To: 'darwin.henry@epa.gov' <darwin.henry@epa.gov>
Cc: 'wehrum.bill@epa.gov' <wehrum.bill@epa.gov>; 'noga.vaughn@epa.gov' <noga.vaughn@epa.gov>; 'bolen.brittany@epa.gov' <bolen.brittany@epa.gov>; 'Bahadori, Tina' <Bahadori.Tina@epa.gov>; 'Gray, David' <gray.david@epa.gov>; 'Idsal, Anne' <idsal.anne@epa.gov>; 'Vandenberg, John' <Vandenberg.John@epa.gov>; 'Thayer, Kris' <thayer.kris@epa.gov>; 'Kirby, Kevin' <KIRBY.KEVIN@EPA.GOV>; Chuck Carr Brown Ph. D. (chuck.brown@la.gov) <chuck.brown@la.gov>; Lori E. Sanders (Lori.e.sanders@dupont.com) <Lori.e.sanders@dupont.com>; Henry, Elise (EHenry@joneswalker.com) <EHenry@joneswalker.com>
Subject: Request for Stay of Review of RFR for Chloroprene, RFC # 17002

Mr. Darwin,

Please find attached a PDF copy of my letter of today seeking a stay of EPA's review of Denka Performance Elastomer LLC's Request for Reconsideration of EPA's denial of DPE's Request of Correction of the 2010 Toxicological Review of Chloroprene. Thank you for your attention to this.

Bob Holden

JONES WALKER

Robert E. Holden
Attorney
Jones Walker LLP
D: 504.582.8139 F: 504.589.8139
bholden@joneswalker.com

201 St. Charles Ave, Ste 5100
New Orleans, LA 70170
T: 504.582.8000
www.joneswalker.com

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Message

From: American Energy Alliance [info=americanenergyalliance.org@mail145.sea81.mcsv.net]
on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 8/31/2018 3:34:04 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Is the glimmer gone from the Golden State?

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In the Pipeline

MORNING ENERGY NEWS | 8.31.2018

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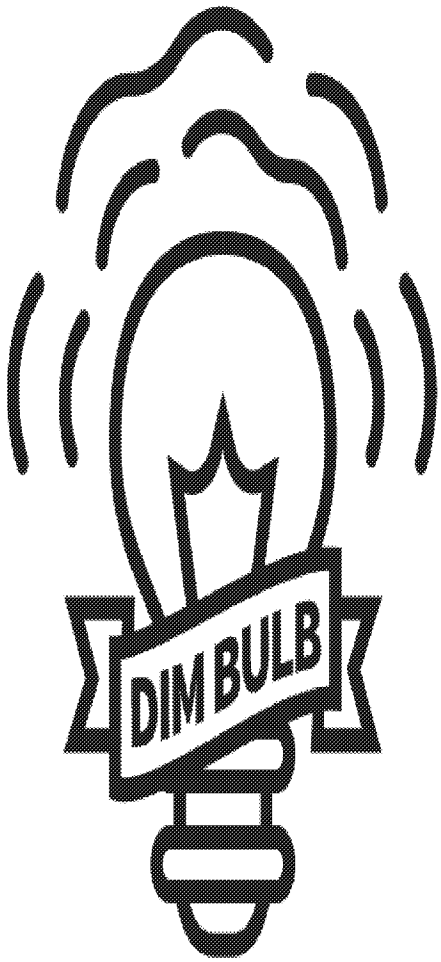
Fixed it: "The state's biggest step yet in the fight against its own citizens."

Bloomberg (8/28/18) reports: "California lawmakers approved a measure mandating that all electricity come from wind, solar and other clean-energy sources by 2045, marking the state's biggest step yet in the fight against global warming. The Assembly voted 43-32 in favor of the legislation Tuesday. It would eliminate the reliance on fossil fuels to power homes, businesses and factories in the world's fifth-largest economy, accelerating a shift already under way. The state currently gets about 44 percent of its power from renewables and hydropower."



"[California's 100% renewable plan is] mostly a question of willpower. From a technological, economic point of view it's possible to do it."

– Mark Jacobson, Stanford University

To put it mildly.

E&E News (8/29/18) reports: "In a *Washington Examiner* op-ed Monday, House Majority Whip Steve Scalise (R-La.) hailed the end of the 'war on coal' and called the proposed ACE rule 'another welcome addition to President Trump's list of promises fulfilled.' But for years, Scalise and other congressional Republicans tried to kill or curtail EPA's authority to regulate greenhouse gases in the first place. While those efforts appear to be on standby for now, some conservatives haven't given up the idea of revisiting the issue. EPA's authority 'is still unclear, and anything we can do to provide greater clarity of what their role is, we should,' Sen. James Lankford (R-Okla.) said yesterday. 'I mean, EPA has a very important role in what we're doing, but it lacks clarity.'"

Blame Ca-na-da! Blame Ca-na-da!

The Hill (8/30/18) reports: "A Canadian court blocked a major oil pipeline project, ruling that the country's federal government didn't properly consider the impacts of the controversial C$7.4-billion, 715-mile pipeline. In a major blow for Prime Minister Justin Trudeau and his Liberal Party government, the Federal Court of Appeal overturned the federal approval of the Kinder Morgan Inc.'s Trans Mountain Pipeline expansion project Thursday, effectively blocking it for

the time being. The decision comes months after Trudeau agreed to buy the Trans Mountain expansion project in order to sell it to a new owner and rescue the project from its financial difficulties."

Keep your subsidized hands off my national pastime!

Twitter (8/30/18):

CityLab
@CityLab

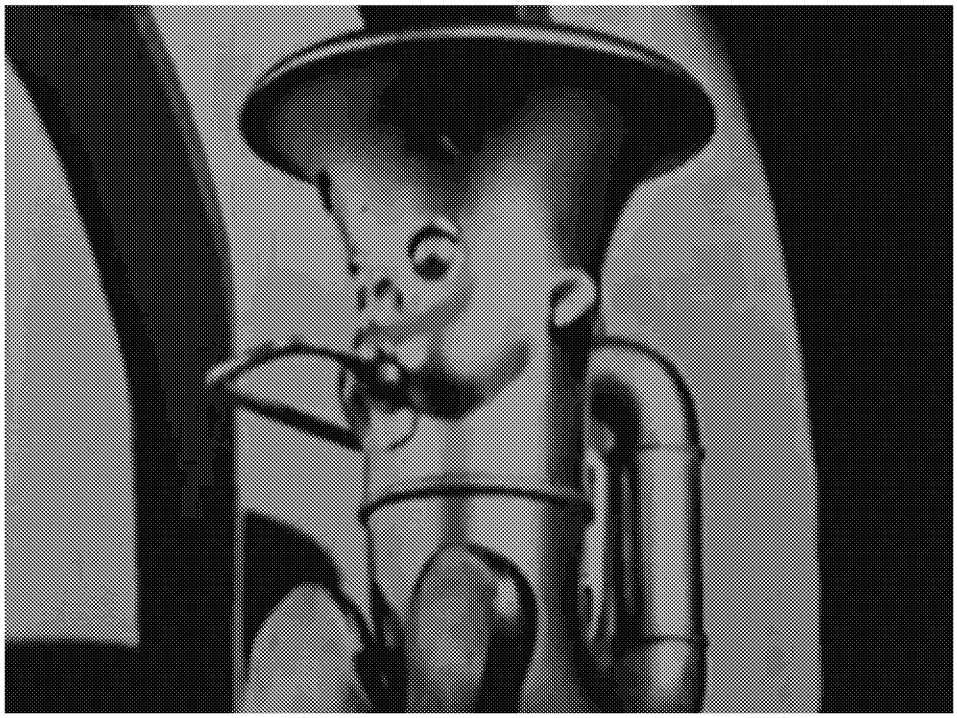
Like so many human problems, the issue of game-day traffic congestion has caught the attention of @elonmusk.

Can Elon Musk Save Baseball?
citylab.com

3:56 PM · Aug 30, 2018

I hate to toot our own horn...but I'm going to toot our own horn: We've been making this case for years.

Univ. of California-Berkeley Haas School of Business (August 2018) study: "The standard economic argument is that an increase in near-zero marginal cost renewable output will result in a reduction in the wholesale price – an outcome referred to as the 'merit-order effect' (Sensfuß, Ragwitz and Genoese, 2008). However, we present evidence that growth in renewable capacity does not uniformly decrease wholesale prices. In particular, while expansions in solar capacity push wholesale prices down during daylight hours, prices are found to increase during non-daylight hours."



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Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity
Joe Bast, Heartland Institute
David Ridenour, National Center for Public Policy Research
Grover Norquist, Americans for Tax Reform
Sabrina Schaeffer, Independent Women's Forum
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Rich Collins, Positive Growth Alliance
Craig Richardson, E&E Legal
The Honorable George Allen, American Energy Freedom Center
Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↓ $69.81
Natural Gas: ↑ $2.91
Gasoline: $2.84
Diesel: ↑ $3.16
Heating Oil: ↓ $223.76
Brent Crude Oil: ↓ $77.39
US Rig Count: ↑ 1146

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on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 10/5/2018 5:47:35 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Starting Now: Corporate Governance in 2018: Social Responsibility or Political Action?

The Federalist Society

October 5, 2018

Our Call is Beginning NOW

Corporate Governance in 2018: Social Responsibility or Political Action?

Corporations, Securities, & Antitrust Practice Group

Friday, October 5, 2018 | 2:00 p.m. ET

Prof. Charles Elson
Edgar S. Woolard, Jr. Chair
in Corporate Governance and Director
John L. Weinberg Center

Mark Nance
Senior Vice President
and Global General Counsel
Mylan N.V.

Axios recently opined that:

"Be it guns or global warming, a fascinating trend is unfolding in the Trump era: Corporations, under intense social pressure, are filling a void left by governmental gridlock or avoidance ... [t]his phenomenon is inspired not by the pure benevolence of corporations. Instead, it's intense pressure from social media mobs ..."

Seeking a remedy to the "governmental gridlock," Senator Elizabeth Warren introduced the Accountable Capitalism Act, which would seem to codify political government involvement in what has historically been viewed as the exercise of free market capitalism by U.S. based business entities.

Prof. Charles Elson and Mark Nance join us to discuss this trend and what the law regarding a board's duty to stakeholders is and should be.

Dial 888-752-3232 to Participate

Speaker Biography

Prof. Charles Elson

Professor Elson is the Edgar S. Woolard, Jr., Chair in Corporate Governance and the Director of the John L. Weinberg Center for Corporate Governance at the University of Delaware. He is also "Of Counsel" to the law firm of Holland & Knight.

He formerly served as a Professor of Law at Stetson University College of Law in St. Petersburg, Florida from 1990 until 2001. His fields of expertise include corporations, securities regulation and corporate governance. He is a graduate of Harvard College and the University of Virginia Law School, and has served as a law clerk to Judges J. Harvie Wilkinson III and Elbert P. Tuttle of the United States Court of Appeals for the Fourth and Eleventh Circuits. He has been a Visiting Professor at the University of Illinois College of Law, the Cornell Law School, and the University of Maryland School of Law, and is a Salvatori Fellow at the Heritage Foundation in Washington, D.C. and a member of the American Law Institute.

Professor Elson has written extensively on the subject of boards of directors. He is a frequent contributor on corporate governance issues to various scholarly and popular publications. He served on the National Association of Corporate Directors' Commissions on Director Compensation, Director Professionalism, CEO Succession, Audit Committees, Strategic Planning and Director Evaluation, was a member of its Best Practices Council on Coping With Fraud and Other Illegal Activity, and presently serves on that organization's Advisory Council. He is Vice Chairman of the ABA Business Law Section's Committee on Corporate Governance and a member of its Committee on Corporate Laws.

Additionally, Professor Elson served as an adviser and consultant to Towers Perrin, the international human resource management consultants, a director of Circon Corporation, a medical products maker; Sunbeam Corporation, the consumer products manufacturer; Nuevo Energy Company, an independent oil and natural gas producer, the Investor Responsibility Research Center, a non-profit corporate governance research organization, Alderwoods Group, an international death care services provider and is presently, a member of the Board of Directors of AutoZone, Inc., the national automobile parts retailer, HealthSouth Corporation, a healthcare services provider.

Mark Nance

Mark Nance is Senior Vice President and Global General Counsel for Mylan N.V. He is responsible for Mylan's worldwide team of legal professionals and legal operations. Prior to joining Mylan in early 2012 he served as the general counsel of General Electric Company's pharmaceutical and life sciences businesses, which specialize in diagnostic pharmaceuticals and other high value diagnostic and analytic technologies. Mr. Nance graduated from the University of Missouri and was commissioned an officer in the United States Marine Corps where he served globally in various roles for several years. He then attended Cornell Law School and upon graduation entered private practice with a large law firm specializing in M&A and securities work. Mr. Nance has also served as an advisor to the Chairman of the United States Federal Trade Commission specializing in areas of technology and antitrust policy.

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Message

From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 10/5/2018 1:47:20 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: The pot calls the kettle black.

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In the Pipeline

MORNING ENERGY NEWS | 10.5.2018

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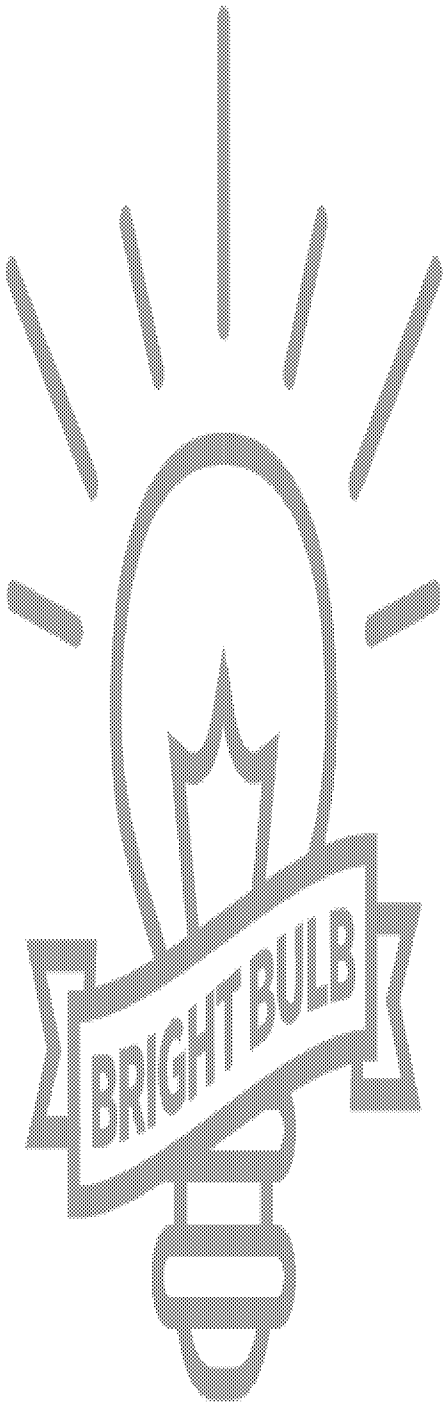
How much does solar add to the rest of our bills and taxes via net metering, ITC, local subsidies, etc.?

Greentech Media (10/4/18) reports: "Customers started paying elevated prices immediately after the U.S. International Trade Commission announced its finding of 'serious injury' in the Section 201 trade case, according to a recent report from solar marketplace EnergySage. Using the average tariff-related customer price increase of $0.16 per watt applied to all residential purchases since the U.S. International Trade Commission's decision, EnergySage found the tariffs added $236.5 million to bills for solar projects."



"To determine liability, the court would need to determine that King County has a 'right' to the climate-in all of its infinite variations-as it stood at some unspecified time in the past, then find not only that this idealized climate has changed, but that Defendants caused that change through 'unreasonable' action that deprived Plaintiff of its right to the idealized climate."

– Coalition of Attorneys General Against the King County (WA) Climate Lawsuit

Plot twist!

Bloomberg Government (10/4/18) reports: "Could wind farms—sources of carbon-free electricity—actually could worsen climate change in the places wind power is produced? That's the conclusion of a new Bill Gates-funded Harvard University study that is raising eyebrows among climate and energy scientists, who counter that wind farms really don't do much to turn up the heat near wind turbines. If it proves to be true, the research is significant. It suggests that as renewable energy helps to slow the climate change-induced rising temperatures as humanity weans itself from fossil fuels, the heating effect of wind farms could sully the climate benefits in regions where wind power is produced."

Trudeaun't tread on me.

CTV News (10/3/18) reports: "Manitoba Premier Brian Pallister did an about-face on carbon taxes Wednesday, abandoning plans to start charging a levy in December and joining other conservative leaders in flat-out opposition to federal plans...Pallister has long said his approach was legally sound, would help the environment and strike a middle ground. But on Wednesday he said the province was pulling out completely because Ottawa has not backed off on threats to backstop Manitoba's tax with its own, higher rate. 'That respect hasn't been forthcoming. The uncertainty remains and, if it isn't addressed, it's going to affect our ability to attract business capital,' the premier said. 'We're forced to either fight (the federal government) in a year, when they invoke a higher tax...or to stand up to them now. We're choosing to do it now.'"

The corn capos just won't let it go.

Bloomberg (10/4/18) reports: "President Donald Trump may tell Iowa voters next week he'll allow year-round sales of high-ethanol gasoline -- a move that could bolster Midwest Republicans in tough election contests. Trump could commit to the policy change on E15 fuel that would expand the market for corn-based ethanol during a campaign event near Council Bluffs, Iowa, next

Tuesday, according to people familiar with the planning who asked not to be named while negotiations are under way."

Right on.

Energy Information Adminstration (10/4/18) update: "In the first half of 2018, U.S. natural gas supply and demand grew significantly compared to the first half of 2017. According to EIA's *Natural Gas Monthly*, natural gas consumption and exports averaged 93.4 billion cubic feet per day (Bcf/d) during the first half of 2018, or 12% greater than during the first half of 2017. Total supply of U.S. natural gas, including domestic production, imports, and storage withdrawals, averaged 93.3 Bcf/d during the first half of 2018, a 12% increase from the first half of 2017."

This message is brought to you by the Ministry of Propaganda.

Daily Caller (10/4/18) reports: "For the next month, pedestrians walking through New York City's five boroughs will see flashing road signs warning those walking by of the alleged dangers of man-made global warming. 'Climate denial kills,' 'Abolish Coal-Onialism,' '50,000,000 Climate Refugees' and 'End climate injustice' are just some of the warnings passersby will see as part of Mayor Bill de Blasio's effort to sound the alarm on global warming. De Blasio's office teamed up with the Climate Museum as part of a campaign called 'Climate Signals' to put up road signs with warnings that were designed by artist Justin Brice Guariglia."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance
Myron Ebell, Competitive Enterprise Institute
Phil Kerpen, American Commitment
William O'Keefe, George C. Marshall Institute
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Joe Bast, Heartland Institute
David Ridenour, National Center for Public Policy Research

Grover Norquist, Americans for Tax Reform
Sabrina Schaeffer, Independent Women's Forum
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Rich Collins, Positive Growth Alliance
Craig Richardson, E&E Legal
The Honorable George Allen, American Energy Freedom Center
Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $74.72

Natural Gas: ↑ $3.21

Gasoline: $2.91

Diesel: ↑ $3.26

Heating Oil: ↑ $240.86

Brent Crude Oil: ↑ $84.78

US Rig Count: ↑ 1165

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Message

From: Culligan, Kevin [Culligan.Kevin@epa.gov]
Sent: 2/13/2019 10:26:05 PM
To: Woods, Clint [woods.clint@epa.gov]; Harlow, David [harlow.david@epa.gov]
CC: Dominguez, Alexander [dominguez.alexander@epa.gov]
Subject: Speaker list for 111(b)
Attachments: 111b-Public-Hearing Registration Desk 2-12-19.xlsx; 111b-Public-Hearing Registration Desk 2-12-19.pdf

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From: Ashley, Jackie
Sent: Tuesday, February 12, 2019 3:28 PM
To: Ashley, John <ashley.john@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Hutson, Nick <Hutson.Nick@epa.gov>; Fellner, Christian <Fellner.Christian@epa.gov>; Davis, Alison <Davis.Alison@epa.gov>; Iglesias, Amber <Iglesias.Amber@epa.gov>; DeFigueiredo, Mark <DeFigueiredo.Mark@epa.gov>; Strine, Lora <Strine.Lora@epa.gov>; Gates, Adrian <gates.adrian@epa.gov>
Subject: Feb. 14 hearing on 111b - Registration desk list

All -
Attached in Excel and PDF is the registration list for the 111b public hearing on Thursday. This is for internal use. I will post the public prelminiary speakers list to the web on Wednesday morning. Please let me know if you have questions.

Jackie Ashley - US EPA - Office of Air Quality Planning and Standards - 919-541-7664 – ashley.jackie@epa.gov

Public Hearing on Proposed Revisions to the Greenhouse Gas Standards for New, Modified, and Reconstructed Coal-fired Electric Utility Generating Units
February 14, 2019
Washington, D.C.

Time	TimeBlock	Name	Affiliation
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10:00 AM	10:00-10:30 a.m.	Matthew Gravatt	
10:05 AM	10:00-10:30 a.m.	Vishnu Laalitha Surapaneni	
10:05 AM	10:00-10:30 a.m.	Stephanie Gagnon	

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1:20 PM	1:00-1:30 p.m.	Lissa Lynch	NRDC

1:25 PM	1:00-1:30 p.m.	Malin Moench	Utah Physicians for a healthy environment
1:30 PM	1:30-2:00 p.m.	Mona Sarfaty	
1:35 PM	1:30-2:00 p.m.	Antonia Herzog	
1:40 PM	1:30-2:00 p.m.	Lauren Greene	
1:45 PM	1:30-2:00 p.m.	Malea Stenzel	
1:50 PM	1:30-2:00 p.m.		
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4:20 PM	4:00-4:30 p.m.		
4:25 PM	4:00-4:30 p.m.		
4:30 PM	4:30-5:00 p.m.	Paul Bailey	ACCCE
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5:00 PM	5:00-5:30 p.m.	Greg Singleton	
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5:30 PM	5:30-6:00 p.m.	Krupal Shah	
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4:30 PM	4:30-5:00 p.m.	Paul Bailey	Paul	Bailey	ACCCE
4:35 PM	4:30-5:00 p.m.				
4:40 PM	4:30-5:00 p.m.				
4:45 PM	4:30-5:00 p.m.				
4:50 PM	4:30-5:00 p.m.				
4:55 PM	4:30-5:00 p.m.				
5:00 PM	5:00-5:30 p.m.	Greg Singleton	Greg	Singleton	
5:05 PM	5:00-5:30 p.m.				
5:10 PM	5:00-5:30 p.m.				
5:15 PM	5:00-5:30 p.m.				
5:20 PM	5:00-5:30 p.m.				
5:25 PM	5:00-5:30 p.m.				
5:30 PM	5:30-6:00 p.m.	Krupal Shah	Krupal	Shah	
5:35 PM	5:30-6:00 p.m.				
5:40 PM	5:30-6:00 p.m.				
5:45 PM	5:30-6:00 p.m.				
5:50 PM	5:30-6:00 p.m.				
5:55 PM	5:30-6:00 p.m.				

Message

From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 2/13/2019 3:06:29 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Well played, sir.

View this email in your browser

MORNING ENERGY NEWS | 2.13.2019

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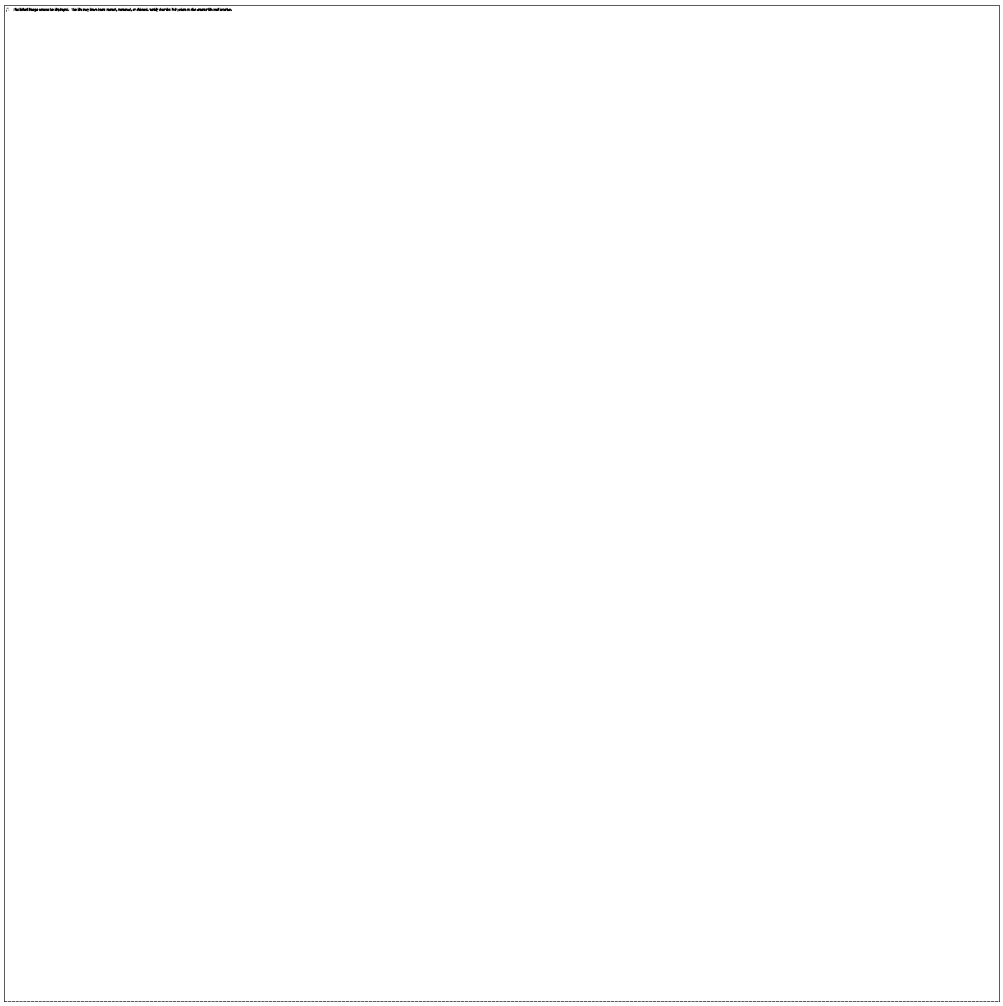
Stand and be counted.

The Hill (2/12/19) reports: "Senate Majority Leader Mitch McConnell (R-Ky.) said on Tuesday that the Senate will vote on the 'Green New Deal,' an environmental and energy plan touted by progressives. The deal has no chance of passing the Senate, where it will need 60 votes. But it will force Senate Democrats, including a slew of 2020 presidential candidates, to vote on the proposal — potentially providing votes for McConnell and the GOP to exploit. 'We're going to voting on that in the Senate. Give everybody an opportunity to go on record,' McConnell told reporters."



The American people deserve to know.

Wall Street Journal (2/12/19) editorial: "Here in one package is what the political left really means when it says Americans need to do something urgently about climate change, so let's see who has the courage of those

convictions. Thanks to the resolution introduced last week by New York Rep. Alexandria Ocasio-Cortez and Massachusetts Sen. Ed Markey, there's already official language. While it's nonbinding, the 14 pages give a clear sense of direction and magnitude in calling for a '10-year national mobilization' to exorcise carbon from the U.S. economy. President Obama's Clean Power Plan looks modest by comparison. The 10-year Green New Deal calls for generating 100% of power from renewables and removing greenhouse gas emissions from manufacturing and transportation—to the extent these goals are 'technologically feasible.' Hint: They're not... So let's not hesitate. Take the Green New Deal resolution and put it to a vote forthwith on the House and Senate floor."

"Green is the new red, as the saying goes, and unless conservatives defeat and discredit these dingbat ideas, Donald Trump will be proven wrong. America will be on its way to becoming a socialist nation."

– Stephen Moore, *Heritage Foundation*

High speed rail derailed on the Left Coast, but sure, air travel will be obsolete in ten years.

Market Watch (2/12/19) reports: "California Gov. Gavin Newsom announced Tuesday he's abandoning a plan to build a high-speed rail line between Los Angeles and San Francisco, a project with an estimated cost that has ballooned to $77 billion.'Let's be real,' Newsom said in his first State of the State address. 'The current

project, as planned, would cost too much and respectfully take too long. There's been too little oversight and not enough transparency.' The idea long championed by Newsom's predecessor, Jerry Brown, is years behind schedule. The latest estimate for completion is 2033."

Cuomo gets owned.

Politico Pro (2/12/19) reports: "President Donald Trump floated the idea of opening up New York to fracking and expressed dismay at New York's enactment of a less-restrictive abortion law during a meeting with Gov. Andrew Cuomo on Tuesday, according to a White House spokesman. Cuomo traveled to Washington to talk to his fellow New Yorker about the impact of the federal government's $10,000 cap on the deductibility of state and local taxes. The governor is blaming the cap, which was included in federal tax reform passed in late 2017, for a drop in revenue that has created a $2.3 billion gap in his proposed budget... Trump suggested that the state could offset the effects of the SALT cap by allowing fracking, which Cuomo banned in 2014, and by approving fossil fuel pipelines to run through the state,'The President discussed economic growth opportunities for the State of New York, including helping lower energy prices throughout the entire Northeast by allowing low-cost, American energy to thrive with fracking and pipeline systems,' Deer said."

Spilling the beans.

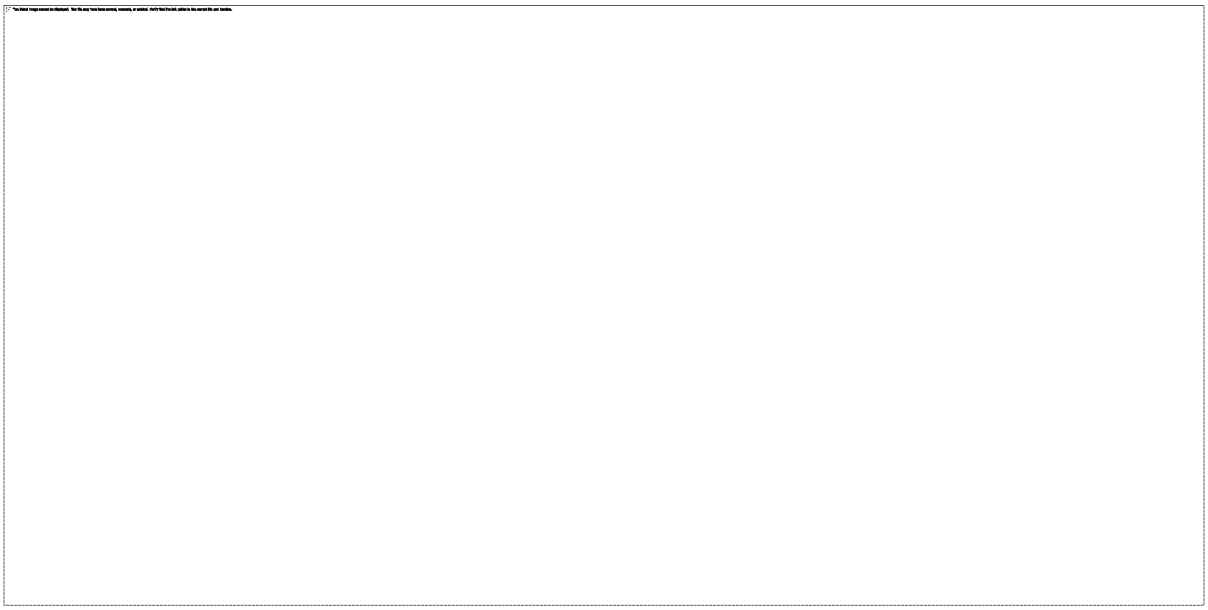
Washington Examiner (2/12/19) reports: "Possible independent presidential candidate and Democratic spoiler Howard Schultz on Tuesday dumped on

Rep. Alexandria Ocasio-Cortez' 'Green New Deal,' warning it would be 'immoral' to spend trillions of dollars on an 'unrealistic' solution. The billionaire former Starbucks CEO and executive chairman urged Democrats to be "truthful" about their environmental initiatives rather than just throwing policies 'against the wall because it's a good slogan.' 'I read that by 2030 they're suggesting that every building in America becomes clean energy, conforms to clean energy, just to put that in perspective, because it's not realistic, that would mean that between 2,000 and 3,000 buildings a day would have to be reconstructed to conform to what they're saying,' Schultz said. 'So let's be sensible about what we're suggesting.'"

The greens hate coal. Coal lifts people out of energy poverty. Why do the greens hate poor people?

Times of India (1/23/19) reports: "The Narendra Modi government has opened 52 new coal mines since coming to power in May 2014 to fuel its flagship village and household electrification programmes without tripping the system, officials told TOI. These 52 mines represent 86% growth over the number of mines added in the five year period between 2009 and 2014... The new mines have added 164 MT (million tonne) to India's annual coal production capacity, marking 113% increase over capacity added during the 2009-2014 period. Since 57% of power is generated in

India by burning coal, these mines allowed the government to rapidly move towards universal electricity access without creating shortages."



Energy Markets

WTI Crude Oil: ↑ $53.75
Natural Gas: ↓ $2.58
Gasoline: $2.27
Diesel: $2.91
Heating Oil: ↑ $193.60
Brent Crude Oil: ↑ $63.38
US Rig Count: ↑ 1084

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Message

From: Maisano, Frank [frank.maisano@bracewell.com]
Sent: 9/17/2018 7:19:27 PM
To: Maisano, Frank [frank.maisano@bracewell.com]
Subject: Sep 17 PRG Energy Update: Hurricane Florence, Top Interior Lawyer to Join Bracewell

Friends,

Well, that was an interesting weekend. While I was umpiring my own NCAA games and watching Hannah's in Boston, Hurricane (and now "heavy-rain storm') Florence was battering the Carolinas. We have a full report in a separate section below. I am doing regular reports that include information from Duke, EEI, EIA, NRECA and others, so please let me know if you are interested and I will add you to the list.

Meanwhile, on Friday, lots of movement in the RFS discussion. Ag economist Scott Irwin of the U of Illinois (generally very favorable to the ethanol folks surprised many when he released a paper that said small refiner exemptions have not had any significant impact of ethanol demand. It echoed another paper also released Friday by Charles River Associates that argued the same point. Finally, Sen Pat Toomey invited EPA chief Andy Wheeler to come to a Pennsylvania refinery. All of this detailed below.

The House is out this week because Wednesday is *Yom Kippur* – which I will "celebrate" by taking my son Adam for his final on-road driving test at the Motor Vehicle Administration in MD. Talk about a Day of Atonement…that is it. Senate is in tomorrow and Thursday and in fact could vote as early as this week on a water infrastructure package that passed the House last week. And don't sleep on the vernal equinox – fall hits on Saturday evening.

Exciting Bracewell News: top Interior Department lawyer Ann Navaro (a Wellesley alumni) has joined Bracewell's Environmental Strategies Group. Navaro has over 25 years of experience working as an attorney and advising senior leadership at federal agencies on environmental and natural resources policies and programs. She has also held senior legal/policy positions at the US Army Corps of Engineers and spent 14 years handling litigation in DOJ's Environment and Natural Resources Division. Navaro has been involved in some of the most challenging and high-profile policy issues and disputes in environmental and natural resources law, including recent policy shifts to streamline federal permitting, oil and gas leasing in Alaska, Asian carp infiltration in the Great Lakes, Clean Water Act 404 actions, offshore royalty disputes, coal mining, hydropower projects, casino development, offshore sonar use, new oil and gas regulations, and federal takings and constitutional challenges. She will be a great resource for you on these issues so let me know if you are interested in connecting with her.

Finally, this is not about energy, but as you know, as a member of the National Press Club, I help promote Club-sponsored events like luncheons, newsmakers, etc. Given recent issues that have supercharged the SCOTUS nomination hearings, I wanted to mention a great one tomorrow at the Club featuring EMILY'S LIST head Stephanie Schriock, who will discuss the mid-term election, politics and the role of women this fall. The luncheon starts at 12:30 pm, comments start at 1:00 p.m. and I hope you can attend.

Call with questions. Best,

Frank Maisano
(202) 828-5864
c. (202) 997-5932

FRANKLY SPOKEN

"Since its creation over a decade ago, the RFS has failed to accomplish the originally-envisioned goals of tangible environmental benefits or improved energy independence. Moreover, the RFS has imposed financial harm on motorists, the broader transportation sector, and domestic oil refiners. To achieve RFS compliance, merchant

refineries must spend millions of dollars each year on Renewable Identification Numbers (RINs), money which would otherwise go toward needed capital investments and the hiring of additional workers. The RFS picks winners and losers amongst sources of energy, and has named merchant refiners, particularly those in the Philadelphia region, the losers."

Senator Pat Toomey in a letter inviting EPA chief Andrew Wheeler to visit Pennsylvania refiners to discuss the RFS.

ON THE POD

Bracewell, Chamber Energy Experts Discuss ACE Rule – With EPA announcing its new public hearing for its ACE rule on October 1st, I am resending a great Bracewell PRG explainer podcast with Scott Segal of Commerce Global Energy Institute President Karen Harbert and former Assistant Administrator of the EPA for Air and Radiation, Jeff Holmstead. Karen, Scott, and Jeff discuss the EPA's proposed Affordable Clean Energy (ACE) Rule, how it compares to the Clean Power Plan, and more.

FUN OPINIONS

Ag Economist's Paper on Ethanol Demand Causes Waves – U. of Illinois Agricultural Economist Scott Irwin has almost always a supporter of the ethanol industry, but he shook up both sides on Friday with a new paper that undercuts the ethanol industry's long-standing claim that small refiner waivers have hurt demand. Today in FarmdocDaily, Irwin said ***"analysis of data on ethanol and gasoline consumption in the U.S. shows there is little if any evidence that the blend rate for ethanol has been reduced by SREs. If there has been any ethanol "demand destruction" to date it was very small, perhaps a drop in the ethanol blend rate of a tenth, which equates to only about 140 million gallons of ethanol consumption on an annual basis."*** As he said in a tweet on the info, *"I just as well say it up front. This ain't gonna make me any friends in the corn ethanol industry. But this is what the data tells us to date: Hard to detect any physical demand destruction for ethanol due to small refinery exemptions."*

HURRICANE FLORENCE UPDATE

Florence was downgraded to a tropical depression, but it continues to be a dangerous storm. The threat of catastrophic flooding is real. The storm continues to dump record amounts of rain, and streams and rivers are expected to flood even after the storm has passed.

As of 4:00 p.m. EDT on Sunday, approximately 664,000 customers were without power in North and South Carolina. Power outages will continue to fluctuate as flooding moves or limbs and trees continue to fall. Crews are working around the clock to restore power where it is safe and conditions allow. Impacted **electric companies are reporting that they already have restored power to more than 1 million customers since the storm began**. As the storm progresses, electric companies are reallocating resources strategically to ensure a safe and efficient response.

Other Important Safety Tips for Recovery, Restoration – A few important tips about power restoration and recovery:

- In hard-hit areas, estimated restoration times will be determined after field crews first complete damage assessments. That process could take several days due to road closures caused by severe flooding and storm debris, especially in the coastal areas of both states, limiting travel for crews.

- Never bring a generator indoors, and if rising water threatens your home or you evacuate, turn off your power at the circuit breaker panel or fuse box. Such equipment should be operated only outdoors, and only in well-ventilated areas. Manufacturer instructions should be followed.

- Utilities are asking customers for their patience ahead of what will be a lengthy period of power restoration and recovery from this major storm.

HVACR Units and Flooding – Flooding creates a unique and dangerous power restoration environment. In many cases, crews are not able to gain access to the most heavily damaged and flooded areas until the storm clears and it is deemed safe for them to enter. _It is also important for consumers when they return to their homes or businesses. After a flood or storm surge from a hurricane, homeowners must take important safety precautions with regard to their home's heating and cooling systems. A house or basement exposed to standing water or storm surge can damage your home's water heater, furnace, boiler, air-conditioning, ventilation, and heat pump system and put your family at risk._The HVACR industry reminds people how to handle flooding and your home's HVAC systems safely. Here is a full account of things to consider: http://bit.ly/2rg0xky

EEI Can Help With Process Questions – Should you have any questions about the electric power industry's restoration efforts, our friends at EEI can help with background, historical perspective and details. Their team is closely coordinating with the electric companies impacted by Florence. Check out the EEI Storm Center here to see important information, details and safety tips. You can contact Brian Reil (breil@eei.org; 508-414-5794) to connect.

EIA Continues to Monitor Power_– EIA is monitoring the Hurricane in its *Hurricane Florence Electricity Status Report*

Electricity: Load forecasts in the east (CPLE, SCEG, SC) show load beginning to recover today as the storm moves west and restoration efforts continue. CPLW and DUK in the west expect lower or similar loads today compared to yesterday.

Generators: Solar generation has declined over the past few days, particularly in CPLE and SCEG. Coal and natural gas generation has varied by balancing authority. One of the McGuire nuclear plant's two units shut down beginning Friday night for planned maintenance unrelated to Florence. The Brunswick nuclear plant remains offline as of Saturday night.

Customers: As of 10:52 a.m., about 703,000 customers in North Carolina and about 52,000 customers in South Carolina have reported electricity outages, roughly 14% and 2% of the customers in the states, respectively. Outage numbers are falling in some counties and rising in others as the storm moves inland and restoration is underway.

Sutton Power Station and Coal Ash Ponds – The Sutton Power Station in Wilmington saw a minor storm related water overflow in its coal ash pond. Here are the full details from Duke Officials: https://news.duke-energy.com/releases/historic-rains-from-hurricane-florence-cause-water-release-at-sutton-power-plant-in-wilmington-n-c

Release Text:

Historic rains from Hurricane Florence caused the release of stormwater, which may have come into contact with coal ash from a lined landfill, at the company's Sutton Power Plant in Wilmington. Because of the heavy rainfall amounts, it is difficult to calculate the amount of water that may have reached Sutton Lake, the cooling pond that was constructed to support plant operations.

Inspections today identified a slope failure and erosion in one section of the coal ash landfill, which displaced about 2,000 cubic yards of material and would fill about two-thirds of an Olympic-sized swimming pool. The majority of displaced ash was collected in a perimeter ditch and haul road that surrounds the landfill and is on plant property.

Coal ash is non-hazardous, and the company does not believe this incident poses a risk to public health or the environment. The company is conducting environmental sampling as well.

Site personnel are managing the situation and will proceed with a full repair as weather conditions improve.

Ash basins, which are being excavated, and the cooling pond continue to operate safely.

IN THE NEWS

Navaro Joins Bracewell – Bracewell said that Ann D. Navaro has joined its Washington, DC office as a partner in the Environmental Strategies Group. Navaro has over 25 years of experience working as an attorney and advising senior leadership at federal agencies on environmental and natural resources policies and programs. For the last two years, she has held senior positions at the US Department of the Interior, including most recently as Counselor to the Solicitor. In her distinguished career with the federal government, Navaro has worked on a wide range of issues with federal agencies, including litigation, regulation, legislation and the implementation of environmental and natural resources programs. She has held senior legal and policy positions at the US Army Corps of Engineers and the Department of the Interior. Navaro spent 14 years handling litigation in the Environment and Natural Resources Division at the US Department of Justice, as well as 10 years litigating and overseeing civil works litigation for the Army Corps. Navaro has been involved in some of the most challenging and high-profile policy issues and disputes in environmental and natural resources law, including recent policy shifts to streamline federal permitting, oil and gas leasing in Alaska, Asian carp infiltration in the Great Lakes, Clean Water Act 404 actions, offshore royalty disputes, coal mining, hydropower projects, casino development, offshore sonar use, new oil and gas regulations, and federal takings and constitutional challenges. At Bracewell, Navaro will focus her practice in four areas: (1) development projects, (2) regulatory counseling, (3) policy advocacy and (4) government litigation.

Three Reports Undercut Ethanol Demand Destruction Claim – Three reports on Friday said ethanol demand is not be lost and one of them is the work of Agricultural economist Scott Irwin, who usually supports ethanol views.

Irwin Paper – Today in FarmdocDaily, U. Illinois Ag Economist Scott release a paper on SREs and ethanol demand destruction. To date, Irwin says he cannot find much if any drop based on ethanol blend rates. He added there may be E10 ethanol demand destruction with SREs in the future if price of ethanol goes above price of gasoline. SREs have reduced the demand for E15 and E85 but Irwin says it's hard to measure since it is so small, but adds further expansion of the demand for higher ethanol blends is not in the cards so long as SREs are granted (and not reallocated). Irwin said ***"analysis of data on ethanol and gasoline consumption in the U.S. shows there is little if any evidence that the blend rate for ethanol has been reduced by SREs. If there has been any ethanol "demand destruction" to date it was very small, perhaps a drop in the ethanol blend rate of a tenth, which equates to only about 140 million gallons of ethanol consumption on an annual basis."*** See the full paper with charts here: https://farmdocdaily.illinois.edu/2018/09/small-refinery-exemptions-and-ethanol-demand-destruction.html

Charles River Paper – Irwin's views are underscored by another new report released today as well from Charles River Associates that in essence, comes to the same conclusion.

The report from Charles River Associates (CRA), just released, dated September 2018, and entitled, "Economics of Small Refinery Exemptions under the RFS." You can see the full report here:

Among the noteworthy conclusions of the recent CRA report are the following:

- ***"This report shows that increased SREs and lower ethanol RIN prices have not caused ethanol demand destruction. This is supported by a review of RIN pricing economics and an analysis of ethanol blend rates, which have continued to increase after SRE announcements."***

- Even outside of the RFS, "There is a significant base level of demand for ethanol blending unrelated to the annual RFS obligations. Drivers of this demand include octane enhancement and serving as oxygenate, as well as direct price competition between ethanol and refined petroleum products."

- This base level of demand ensures that SREs and normalization of RINs prices have no impact of ethanol demand. Indeed, RINs prices could literally fall to zero without impacting ethanol blend rates.

- CRA continues: "Simply put, changes in D6 RIN prices do not impact ethanol blend rates as long as the RIN price remains above the level needed to support ethanol blending. We demonstrate that actual D6 RIN prices have been above the 'needed' RIN prices for the majority of the RFS program's history. In fact, for the past several months, fuel economics have driven the 'needed' RIN price below $0/RIN."

The conclusion is clear – "Since D6 RIN prices have remained above the "needed" D6 RIN price, there has been no change in incentives for ethanol blending. This is supported by a review of ethanol volumes and blend rates, both of which have been increasing over time."

Former EIA Analyst Joanne Shore Finds Similar Issues with Demand – Irwin and CRA's findings are also backed up by similar, recent analysis from Joanne Shore, the long-time former chief analyst for fuels and refining issues at the Energy Information Administration. Her September 11, 2018, conclusion:

"The data show that there is no evidence of domestic biofuel demand destruction from RFS waivers to small refiners. Biofuel demand is robust and increasing, likely as a result of what RFA recognizes in its own analysis: the low price of ethanol relative to gasoline. As numerous studies have indicated, ethanol blending will remain economic, even in the absence of a mandate. These facts strongly suggest that both Congress and the administration can take action to control the cost of the RFS and RINs in a manner that protects refining jobs, without adversely impacting the biofuel sector."

Toomey Issues Invite to EPA Chief – Speaking of ethanol, Sen. Pat Toomey invited the top EPA official Andy Wheeler to visit the oil refineries in the Philadelphia area. In a letter sent to Wheeler, Toomey wrote that the Renewable Fuel Standard (RFS), which is a federal mandate requiring gasoline to contain up to ten percent ethanol, is imposing such high costs on refiners that it threatens local employment and the greater Philadelphia economy. Monroe Energy and Philadelphia Energy Solutions (PES), the largest refining complex on the East Coast, are both located in the Philadelphia area and employ a combined 1,600 people. To comply with the RFS, these two refiners must spend hundreds of millions of dollars annually to acquire so-called RINs. High and unpredictable RIN prices threaten the financial well-being of these facilities and jeopardize their high-paying, blue collar jobs. Earlier this year, PES declared bankruptcy in large part due to the unsustainable compliance costs associated with the RFS.

IER Unveils Green Grant Tracker – The Institute for Energy Research released a new grant tracker today called "Big Green, Inc.", a powerful new research tool that shines a long overdue spotlight on the money that is fueling the massive national environmental lobby. Big Green, Inc. uncovers the scope of the environmental movement's funding as well as the role this interrelated network of organizations has had on energy policy. Taking the form of a searchable database, Big Green, Inc. tracks 8,821 environmental grants from 2008-2016 adding up to $3.7 billion. This money flowed from ten left-leaning foundations to over 1,500 environmental activist groups spanning all 50 states. The map allows users to track the funding sources across a variety of dimensions including state and year, and identifies the issue areas for which these organizations received money, for example, climate change advocacy, anti-coal initiatives, and political activism.

Energy Funding Passes – Congress passed the FY2019 "Minibus" spending bill Thursday. The funding bill address programs for energy and water programs, including clean energy programs at DOE. The Business Council on Sustainable Energy's **Lisa Jacobson** said "*the market dynamism and innovation we are seeing in the clean energy sector has come as the result of the partnership between the federal government and clean energy industries and from DOE's world class research, both pure and applied. Congress recognizes this and continues to fund important clean energy programs and to invest in energy research development and deployment that will help to sustain growth in clean energy markets.*" And Clearpath's **Rich Powell** added "*Congress again sent an undeniable message that lawmakers are serious about keeping the U.S. in the top tier of countries pursuing clean and reliable energy breakthroughs. While steady and sufficient funding is essential, providing important direction and reforms to the DOE to make sure that dollars are well spent is equally vital to spurring energy innovation.*"

House Passed Key Senate Advanced Nuke Legislation – And while they were passing legislation, House approval of the Nuclear Energy Innovation Capabilities Act, which would strengthen partnerships between the private sector and government researchers to test and demonstrate the next generation of clean advanced nuclear reactor concepts. The bill, led by Sens. Michael Crapo (R-Idaho), Sheldon Whitehouse (D-R.I.), Energy and Natural Resources Chairman Lisa Murkowski (R-Alaska) and others, was approved by the Senate in March and now heads to President Trump, who is expected to sign the legislation. NEICA authorizes the development of a versatile neutron source for advanced reactor testing. Many of the promising new reactor designs currently being developed utilize "fast neutrons," so the test bed

created under NEICA is essential to developing those new fuel designs. A versatile neutron source can also allow accelerated research for all new advanced reactors. It is important to note that this R&D capability is only available for civilian use in Russia, so a domestic U.S. facility is essential to advancing American technologies. *"NEICA will create a strong new foundation for global nuclear innovation leadership. By preparing a test bed for our advanced reactor entrepreneurs, we have thrown down the gauntlet to our Russian and Chinese competitors that the United States will not be out-innovated in the technology we invented,"* ClearPath Action Executive Director **Rich Powell** said.

ON THE SCHEDULE THIS WEEK

Electric Cars on Display on National Mall – National Drive Electric Week launched yesterday in Washington on the National Mall near National Gallery of Art (7th Street, NW) with presentations about electric vehicles and the latest models on the National Mall. There will be more events this week

CSIS Hosts Trade Reps – This afternoon, the CSIS Scholl Chair in International Business is hosting a conversation with six former United States Trade Representatives, who will share wisdom from their own experience and discuss the current global trading system, its institutions, and the prospects for trade in these challenging times. Speakers include Bill Brock, Carla Hills, Micky Kantor, Charlene Barshefsky, Susan Schwab and Ron Kirk.

Forum to Look at Energy Future – The Hoover Institution hosts "MIT-Stanford Energy Game Changers Symposium" tomorrow at 8:45 a.m. Recent progress in energy technology research and development in the United States has been substantial-the past decade has seen dramatic reductions in the costs of emerging technologies alongside similar improvements in energy security and environmental performance. Former US Secretary of State George P. Shultz alongside scientists and engineers from two leading American research universities and DOE national labs will explore the potential for energy "game changers": inexpensive and abundant clean electricity production, affordable grid energy storage at scale, secure electrochemical fuel manufacturing, less intensive fossil energy through carbon capture, and more.

DOE to Host Energy Storage Forum – The U.S. Department of Energy's (DOE) InnovationXLab Energy Storage Summit will take place tomorrow and Wednesday at the SLAC National Accelerator Laboratory in Menlo Park, CA. Energy storage is one of the biggest challenges to unlocking the potential from the next generation of transportation and electricity grid technologies. The Summit will showcase the broad array of technical resources available from across DOE's National Lab complex that can be leveraged by industry to address these challenges.

Senate Enviro to Look at Legislation – The Senate Environment Committee will hold a Business Meeting tomorrow at 9:45 a.m. to consider a bill to establish a compliance deadline of May 15, 2023, for Step 2 emissions standards for new residential wood heaters, new residential hydronic heaters, and forced-air furnaces as well as several other bills.

Heritage Looks at SCOTUS Fall Term – The Heritage Foundation holds a discussion for a Supreme Court Preview of the 2018 Term. The Supreme Court returns October 1st for its 2018-2019 Term, and the justices will tackle of number of important issues. Supreme Court litigators Paul Clement and Joseph Palmore will discuss what is likely to unfold in the next Supreme Court term.

ITIF to Host Clean Energy Forum – The Information Technology & Innovation Foundation will host an expert panel discussion tomorrow at Noon on carbon emissions and clean energy. ITIF Senior Fellow Joe Kennedy, author of the recent report "How Induced Innovation Lowers the Cost of a Carbon Tax," will moderate a discussion on innovation, carbon taxes and clean energy.

Phily Forum to Look at GHG Neutrality – Tomorrow at Noon in Phily, the Kleinman Center Energy Forum hosts an expert look at greenhouse gas neutrality featuring Oliver Geden, a lead author of the IPCC Sixth Assessment Report.

Harder, LeVine Headline Clean Energy Discussion – The Atlantic Council's Global Energy Center will host a lively conversation on the future of energy and the role of innovation and new technologies tomorrow at 1:00 p.m. The discussion will feature three leading minds to shine a light on future energy trends. Steve LeVine, a veteran journalist of

geopolitics and energy and whose most recent book The Powerhouse is a deep dive into the race to build a super battery; Akshat Rathi, whose award-winning series *The Race to Zero Emissions* masterfully deconstructs the energy technologies our futures need; and Amy Harder, whose weekly column "Harder Line" reports trends, scoops, and news driving the energy and climate debate, will explore future scenarios for the energy sector.

Senate Committee to Look at Infrastructure Cyber Issues – The Senate Armed Services Cybersecurity Subcommittee will hold a closed-door hearing tomorrow at 2:30 p.m. and will feature testimony from senior energy and homeland security officials, including DOE Assistant Secretary for the Office of Electricity Bruce Walker, DHS assistant secretary for cybersecurity and communications Jeanette Manfra and Kenneth Rapuano, assistant secretary for homeland defense and global security at the Defense Department.

***WaPo* Mooney Headline WRI Forum** – Tomorrow at 3:00 p.m., the World Resources Institute will host a major forum in Washington, DC reflecting on the challenging and important topic of carbon removal. Tailored for a policy audience and featuring leading voices in technology, conservation and the environment, the event will tackle the big questions head on – how can carbon removal help in the fight against climate change? What are the different land management and technological approaches, and how can they be brought to scale in a safe and prudent manner? And finally, what practical steps can U.S. policymakers take to foster action? The event will include a presentation on WRI's latest research findings on carbon removal followed by a dynamic panel discussion moderated by Chris Mooney, Climate and Energy Reporter at The Washington Post.

CSIS Will Hold Forum Private Sector Sustainable Development – CSIS will hold a forum on Wednesday at 1:00 p.m. role of the private sector in achieving the sustainable development goals. The private sector provides 9 out of 10 jobs in developing countries and has an important role to play in achieving the SDGs and solving global problems. Many private sector actors support the SDGs and have joined the UN Global Compact. At the Addis Ababa Financing for Development conference in 2015, it became clear that it would take trillions not billions of dollars of financing of all types to achieve the SDGs. Private sector participation is critical to strengthening the economies in developing countries, employing the growing youth bulge in Africa, and solving global challenges like migration.

FERC Meeting – FERC Commissioners will meet on Thursday at 10:00 a.m.

Coal Marketing Days Forum Set for PA – S&P Global Platts 41st Annual Coal Marketing Days Conference is set for the Westin in Pittsburgh, PA. This long-standing event attracts a variety of coal suppliers and buyers, coal transport companies, and industry-wide analysts and investors who exchange in-depth knowledge on the current state of the global and domestic coal-producing markets.

Forum to Look at China Sludge – On Thursday at 9:00 a.m., the Wilson Center will host a forum on urban waste policies, pilots and innovation. Chen Meian will open up discussing the challenges low-carbon cities face in reigning in greenhouse gasses, and how her think tank is creating a platform for innovative, bottom-up, clean energy solutions. One of the most successful sludge-to-energy plants in China is in Xiangyang City in a plant run by Dou Wenlong. Mr. Dou will explain how his company has built partnerships with the local government to turn captured methane into CNG for a local taxi fleet. Liu Jinghao will give an overview of national-level drivers creating opportunities for methane recovery from MSW and sludge in China. Finally, Liu Xiao will tell a story of how one low-carbon city pilot is sparking climate action in the MSW industry. The speakers are in the United States participating in a technical research exchange sponsored by the Global Methane Initiative.

Webinar to Look at Smart Grid Changes – The National Journal hosts a webinar on the changes in the U.S. energy grid on Thursday at 11:00 a.m. From changing energy sources and technological advances to government regulations, this webinar will look at what implications could smart grid technology have for government, regulation, and public policy. National Journal Presentation Center analysts Julianna Bradley, Sean Lambert, and Taryn MacKinney, as well as National Journal Energy Correspondent Brian Dabbs, will speak at this in-depth look at the issues surrounding the state of the U.S. energy grid.

Offshore Wind Forum Set for Norfolk – The 2018 Virginia Offshore Wind Executive Summit will be held on Friday in Norfolk at the Hilton Main. The event brings together the supply-chain business community with federal and state government officials to accelerate Virginia's inclusion of large-scale offshore wind within the state's energy mix. VA Governor Ralph Northam and Orsted North American President Thomas Brostrom, Dominion Energy, Siemens –Gamesa, US Bureau of Ocean Energy and Management and many others will discuss port infrastructure, supply chain procurement and market opportunities.

Forum to Look at Advanced Nuke Test Reactor – The Global American Business Institute will hold a Capitol Hill briefing on Friday at Noon on the Versatile test reactor. Mr. Donald Wolf – Co-Founder, Chairman of the Board & CEO, ARC Nuclear and Dr. Kemal Pasamehmetoglu – Executive Director, The Versatile Test Reactor, Idaho National Laboratory (INL) will speak.

Heritage to Look at Bloom Energy Challenges – The Heritage Foundation hosts a forum on Friday at Noon featuring University of Delaware Professor and former Delaware State Climatologist David Legates, at a forum on challenges with Delaware's Bloom Energy. Legates has challenges the fuel cell "promise" of inexpensive, clean energy is that it is actually very expensive and not very clean.

Forum to Preview SCOTUS 2018 – On Friday at Noon, the Federalist Society for Law and Public Policy Studies holds another discussion on "Supreme Court Preview: What Is in Store for October Term 2018. US Solicitor General Noel Francisco will offer opening remarks followed by a panel featuring SCOTUS attorneys John Adams, Tom Goldstein, Jennifer Mascott, and Elizabeth Papez. NBC News Justice Correspondent Pete Williams will moderate.

JHU Forum to Look at Developing World Sustainable Energy Utility – On Friday at 12:30 p.m., Johns Hopkins University hosts a forum on utility models in the energy sector in meeting global economic, environmental and social challenges. Anmol Vanamali of the Vermont Energy Investment Corporation will discuss the Sustainable Energy Utility (SEU) model. There will also be a panel to discuss the impacts on Delaware.

IN THE FUTURE

Forum to Look at Building Policies – Next Tuesday morning at the US Green Buildings Council, DOE, the Environment, New Buildings Institute and several partners are hosting the interactive session, which aims to stimulate collaboration, highlight leading local buildings and policies, and foster knowledge sharing regarding net-zero energy practice and policy.

Baltic Energy Forum Set – The Jamestown Foundation will hold a conference on energy security in the wider Baltic region next Tuesday at the University Club. The conference will address the challenge to European security posed by Russia's Nord Stream Two natural gas pipeline project as well as discuss Northern Gate, an alternative energy transit corridor championed by Poland that will open up the region to Norwegian gas supplies and U.S. and international LNG shipments, blunting Gazprom's market monopoly position.

MIT Expert to Talk CCS – The US Energy Assn will hold a forum on carbon capture next Tuesday at 2:00 p.m. featuring MIT Senior Research Engineer Howard Herzog. Herzog will give an overview of the current state of technology and policy related to Carbon Dioxide Capture and Storage (CCS) and cover seven aspects of CCS: (1) the role of CCS in addressing the climate change challenge, (2) a summary of large CCS projects in operation, (3) the current status and future directions for capture technology, (4) the current status and future directions for storage technology, (5) how to view negative emissions, (6) the policies and politics around CCS, and (7) what the future may hold.

CAFE Public Hearing Set for CA, MI, PA – NHTSA and EPA will hold three public hearings on the revisions to the fuels economy standard. The hearing will occur on Sept 25th in Fresno, Sept 26th in Dearborn MI, and Sept 27th in Pittsburgh.

Clean Energy Week Forum Set – The 2018 National Clean Energy Week Policy Makers Symposium will be held on Wednesday at the National Press Club Ballroom. Speakers include Secretary of Energy Rick Perry, EPA Acting

Administrator Andrew Wheeler, Secretary of the Interior Ryan Zinke, FERC Commissioner Neil Chatterjee, Sen. Martin Heinrich, Daines and Murkowski and many more.

Forum to Look at Energy Cybersecurity – RealClearPolitics will hold a forum on energy cybersecurity Wednesday September 26th at 8:00 a.m. at the Newseum. The keynote speaker is Rep. Henry Cuellar of Texas and INGAA's Don Santa and AGA's Dave McCurdy will speak.

Forum to Look at Transportation – The Alliance to Save Energy's 50x50 Commission will hold an event Wednesday, September 26th at 8:30 a.m. in 2255 Rayburn to roll out a new alliance that will unveil its full suite of policy recommendations on Capitol Hill to encourage policymakers to better prepare for the coming transformation. The Commission is a group of business, government, and civil society leaders that has been working to develop a pathway to capitalize on the opportunities of a rapidly changing industry by setting an ambitious goal of cutting the U.S. transportation sector's energy use by 50% by 2050 while meeting future mobility needs. The Commission will unveil. Keynote speakers will include Rep. Debbie Dingell (D-MI) and Pittsburgh Mayor William Peduto. The event looks at the key shifts in the industry, why their organization is participating in the Commission, and the importance of cohesive policies in securing the Commission's vision of the transportation future.

Border Energy Forum Set for San Antonio – The North American Development Bank (NADB) will host the XXIII Border Energy Forum in San Antonio on September 26th and 27th at the Hilton San Antonio. This forum brings together local and state officials, private sector developers, academics, large commercial users, and energy experts from the U.S. and Mexico. NADB's unique position as the only U.S.-Mexico binational development bank, has provided the Bank the opportunity to be involved in some of the most relevant clean energy projects developed in the last five years in the region. NADB has financed close to $1.5 billion for 35 projects with total costs of $5.2 billion. Roughly, 2,548 MW of new generation capacity is being installed along the border. The forum will center the dialogue on energy prosperity, innovation, financing, the future of energy markets, and crossborder opportunities along the U.S.-Mexico border, and how to continue building partnerships to advance both countries energy goals that ultimately improve economic development and protect the environment.

Forum to Look at Cyber Resilience – The US Energy Assn will hold a forum on Thursday, September 27th at 10:00 a.m. on cyber resilience in the energy sector. Speakers from Marsh & McLennan Companies will present, including Paul Mee, North America Cyber Lead, Oliver Wyman, and Matt McCabe, Assistant General Counsel on Cyber Policy, will discuss how they work with companies in the energy sector to prevent, protect against, mitigate, respond to, and recover from cyber-attacks, thus helping them build true cyber resilience.

Forum to Look at Carbon Tax Study – REMI will host a carbon tax discussion at its Washington, DC policy luncheon on Thursday September 27th with guest presenter Scott Nystrom, a Director at FTI Consulting, Inc. Alliance for Market Solutions commissioned FTI Consulting to evaluate the economic, fiscal and emission effects of a national revenue-neutral carbon tax. The study's authors applied this tax at the point of extraction or import, and simulated the implications of raising the cost of fossil fuels on the national, state, and industry levels. Nystrom, a co-author on the report, will review the proposal and the potential implications for the U.S. and state economies and major industries. He will also describe the methodologies behind the analysis of a revenue-neutral carbon tax.

Conservatives to Discuss Nuclear – Experts from the Breakthrough Institute, The Heritage Foundation, the ClearPath Foundation and R Street will hold a forum on Thursday September 27th at 3:00 p.m. looking at innovation and reform to the nuclear industry. After many years of failed attempts, a new path to an economically competitive domestic nuclear industry is close at hand. Nuclear micro-reactors (10 MW and smaller) allow for safe operation with radically simplified designs, making the case for far-reaching licensing and regulatory reform much stronger. Policy elements needed for a better future include licensing reforms at the Nuclear Regulatory Commission, extending the duration of federal purchase power agreements, and supporting construction of new fast reactors and advanced nuclear fuels.

Group to Honor Clean Energy Champs – On Thursday, September 27th at 5:00 p.m. at the Capitol Hill Club, Citizens for Responsible Energy Solutions (CRES) will recognize its 2018 Clean Energy Champions. They include Sens. Lisa Murkowski

(R-AK) and Tim Scott (R-SC), Reps Elise Stefanik (R-NY) and Tom Reed (R-NY) and Govs. Larry Hogan (R-MD) and Gary Herbert (R-UT).

EPA to Host ACE Hearing in Chicago – The EPA will host a single public hearing on its proposed replacement for the Clean Power Plan in Chicago on Monday October 1st at the Ralph H. Metcalfe Federal Building. The building is the home of EPA's Region 5 headquarters.

Cato Hosts Public Transit Debate – On Monday October 1st, the Cato Institute holds a Capitol Hill forum on the Federal role in public transit. Cato's Randall O'Toole and Jarrett Walker will debate.

Ideas Forum Set for DC – The Atlantic Council and Aspen Institute are hosting the Atlantic Festival on October 2-4th at Sidney Harman Hall n DC. Atlantic editor Jeffery Goldberg, former Secretary of State Sen. John Kerry and NYT reporter/author Mark Leibovich are among the numerous speakers. In its 10th year, Washington Ideas has become The Atlantic Festival. The conference always includes in-depth interviews with some of today's biggest thinkers and leaders in technology, politics, business and the arts, we will illuminate new ideas, and grapple with the most consequential issues of our time.

SEJ in Flint – The Society of Environmental Journalism holds its annual conference on October 3-6th in Flint. Of course, Bracewell hosts its annual event on Thursday October 4th.

ClearPath, EPIC, ACCF host Forum on R&D Investments – On October 10, The Energy Policy Institute at the University of Chicago (EPIC), in partnership with ClearPath and the American Council for Capital Formation, will hosting discussions on lessons gleaned from research and practical experiences. The conversations will provide insight into how to translate research findings into actionable policy and industry approaches that can drive clean energy innovation.

Forum to Look at Wood – In recognition of National Forest Products Week, the Environmental and Energy Study Institute (EESI) hosts an innovative class of structural wood building materials. This briefing will bring together experts to tell the emerging story of the U.S. mass timber industry and how to capitalize on its potential. Speakers will include Sen Angus King.

Shale Insight Set For Pittsburgh – Shale Insight 2018 is set for Pittsburgh on October 23-25. The Marcellus Shale Coalition (MSC) hosts the event along with the Ohio and West Virginia Oil & Natgas Assns. SHALE INSIGHT™ offers insightful pre-conference workshops, technical and public affairs sessions, national keynote addresses, and high-powered networking sessions will provide attendees, sponsors, and exhibitor's unprecedented access to the industry's most influential leaders and innovators. You can see the agenda HERE.

Message

From: Lubetsky, Jonathan [Lubetsky.Jonathan@epa.gov]
Sent: 1/30/2019 8:47:43 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: FW: Updated Clint Oct and Nov Calendar
Attachments: Woods, Clint Calendar - October 1 to November 30, 2018 FINAL2.pdf

Clint,
Jessie updated the calendar. I am not going to send it around again to everyone, but wanted you to see it.
Thank you for flagging.
JL

From: Mroz, Jessica
Sent: Wednesday, January 30, 2019 3:45 PM
To: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>
Subject: Updated Clint Oct and Nov Calendar

Here's the updated calendar. Burned and sanitized, so good to upload to FOIAonline.

Best,
Jessie

Jessica C. Mroz
Office of Air Policy and Program Support
U.S. Environmental Protection Agency
Telephone: (202) 564-1094

Message

From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 11/9/2018 3:05:28 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Enviro Shellshock

View this email in your browser

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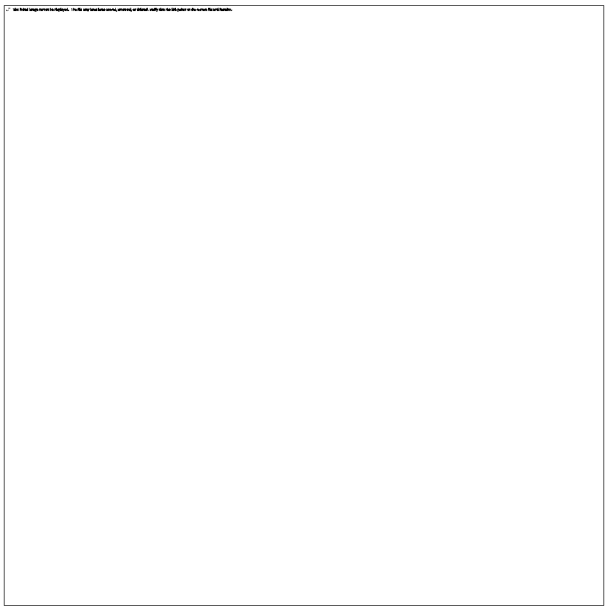
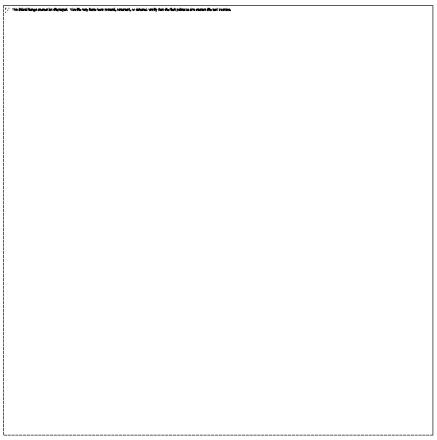
How do you deal with futility?

E&E News (11/8/18) reports: "The midterm election delivered mixed results for climate advocates — and with time running out to avoid catastrophic warming, that means their job could get harder. Big environmental groups boasted yesterday about a new House majority that backs climate action. They touted the gubernatorial and state legislative seats that flipped. And undergirding each of those victories are potent new tools for them: legions of new voters, first-time organizers and a replenished bench of lower-level officeholders. They also suffered losses that could reverberate for years. Voters rejected climate policies in Arizona and Washington — the third such loss in three years in the Evergreen State. Republicans also padded their Senate majority with new members who dismiss climate change, a rightward shift that could outlast the Trump administration and cascade into other realms, like the Supreme Court."


Use total cargo carried in flight(s). Include any total from several, unusual, or atypical. Justify the total lift (pounds) or the number flown/handled.

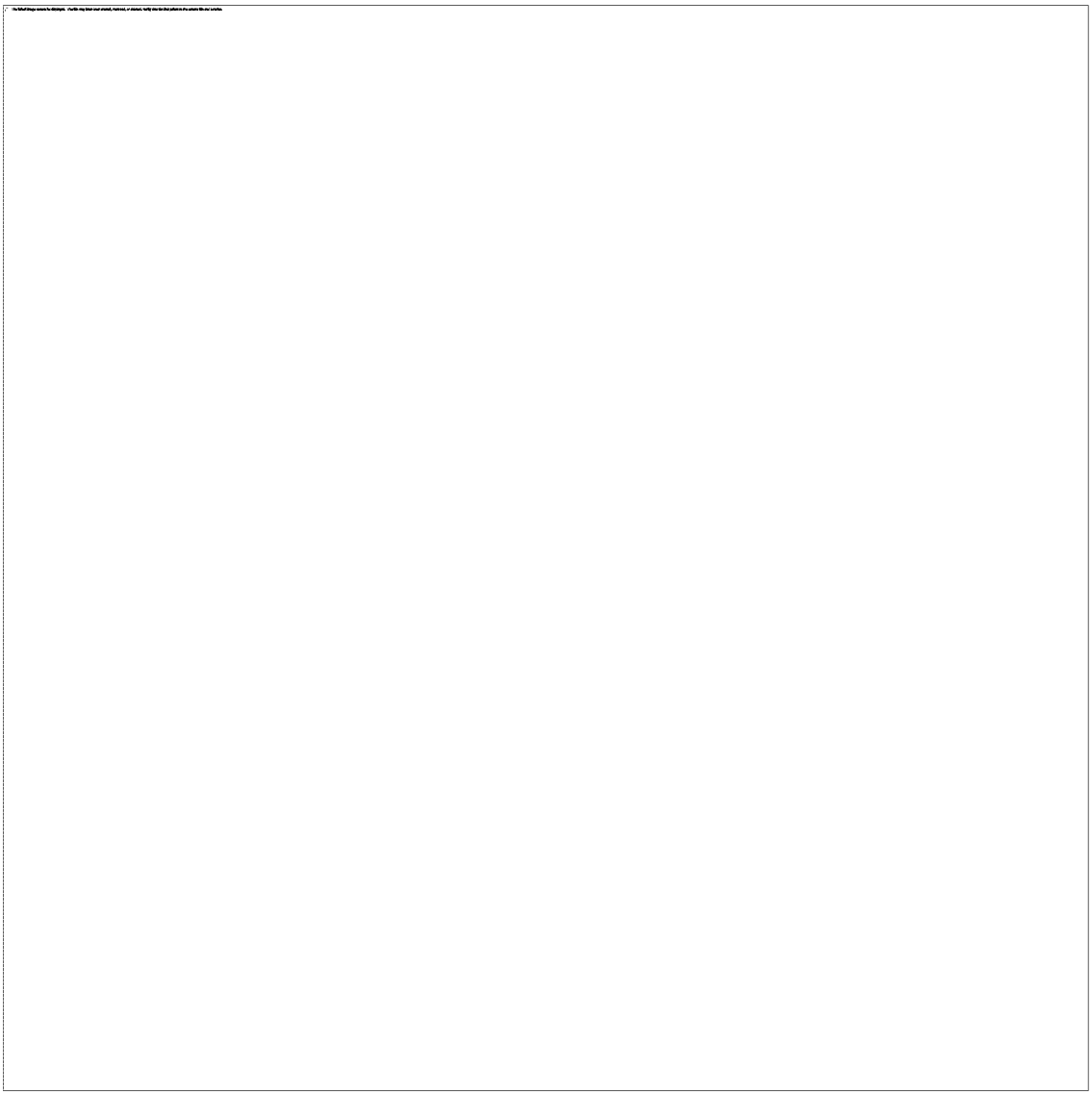


"What it should be is a call to Republicans to figure out a way to offer a solution consistent with Republican values. You want the majority back? Engage on climate."

– Bob Inglis, republicEn

This isn't from Vox. This isn't from Salon. This is from Bloomberg Government.

Bloomberg Government (11/8/18) reports:


The Rollout Image cannot be displayed. Viewer may lower your security, trust zone, or manual verify view this pattern in the camera file on a device.

Nope. That argument has been won.

Washington Examiner (11/7/18) reports: "California's San Luis Obispo County failed to pass a fracking ban on Tuesday, as early votes showed more than 56 percent saying 'no' to the measure. Reports from the county clerk's office suggest that it could take a few weeks to compile all the votes on the measure, with most of the votes counted coming from mail-in ballots. But is there really a cause for a ban on the drilling method?"

Why does California hate freedom?

The Hill (11/7/18) reports: "California voters Tuesday rejected a largely Republican-backed attempt to repeal a 2017 gas tax. With 55 percent of the vote, the state ballot measure that sought to overturn the law to increase gasoline and diesel taxes by 12 and 20 cents per gallon respectively was rejected. The measure would have also overturned a new annual licensing fee for vehicles ranging from $25 to $175."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance
Myron Ebell, Competitive Enterprise Institute
Phil Kerpen, American Commitment
William O'Keefe, George C. Marshall Institute
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Isaac Orr, Center of the American Experiment
David Ridenour, National Center for Public Policy Research
Grover Norquist, Americans for Tax Reform
Sabrina Schaeffer, Independent Women's Forum
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Rich Collins, Positive Growth Alliance
Craig Richardson, E&E Legal
The Honorable George Allen, American Energy Freedom Center
Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↓ $59.76
Natural Gas: ↑ $3.63
Gasoline: ↓ $2.72
Diesel: $3.26
Heating Oil: ↓ $213.87
Brent Crude Oil: ↓ $69.72
US Rig Count: ↑ 1174

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on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 6/14/2018 12:55:47 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Starting Now: Executive Overreach at the EPA? The Pebble Mine Clean Water Act Dispute

The Federalist Society

June 14, 2018

Our Call is Beginning NOW

Dial 888-752-3232 to Participate

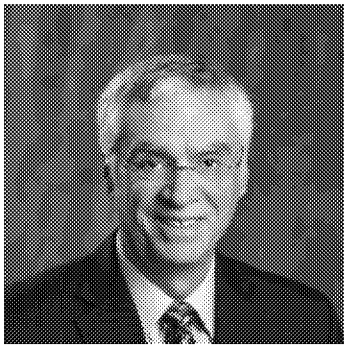
Executive Overreach at the EPA? The Pebble Mine Clean Water Act Dispute

Environmental Law and Property Rights Practice Group Teleforum

Thursday, June 14, 2018 | *9:00 a.m. ET*

Tom Collier
CEO
Pebble Partnership

Myron Ebell
Director
Center for Energy and Environment
Competitive Enterprise Institute



Robert Perciasepe
President
Center for Climate and Energy Solutions

Moderator:
Shannen W. Coffin
Partner
Steptoe & Johnson LLP

Perhaps in no area was President Obama's expansive approach to executive authority more apparent than in the Environmental Protection Agency's ("EPA") interpretation of the Clean Water Act. Although both critics and supporters of the Obama-era EPA have recognized that many of the Agency's Clean Water Act decisions reflected attempts by the Agency to legislate where Congress had not, some observers have found another pattern: EPA was usurping land use decisions that had traditionally been within the exclusive domain of state and local governments. The Waters of the United States rule expanded federal jurisdiction to cover routine farming activities, and the designation of Wilderness Study Areas has prevented development in areas not otherwise subject to extra environmental regulation. While President Trump and EPA Administrator Scott Pruitt have reversed many Obama-era policies, one important one remains: preemptive vetoes of development permits under Section 404 of the Clean Water Act.

The Clean Water Act provides that the U.S. Army Corps of Engineers ("Corps") is in charge of the Section 404 permit application process, including receiving input from the public as well as state and local governments, preparing a comprehensive environmental impact statement, and deciding whether to grant a permit application. By contrast, the Clean Water Act provides EPA with narrow authority to veto a Corps-issued permit at the end of the application process. In 2014, however, EPA initiated a veto of the Pebble Mine, a potential copper and gold mine on state-owned lands in southwest Alaska, before the developer submitted a permit application, much less completed the Corps' permit application process. EPA did so over the express wishes of the State of Alaska. Internal EPA documents even suggest that it believed that the preemptive veto aimed at Pebble could be used as a model for future zoning and watershed planning at the federal level.

This Teleforum will provide an overview of certain current Clean Water Act developments and jurisprudence, as well as a discussion of the steps EPA has taken to veto the Pebble Mine, a proposed veto that remains pending. In particular, the teleforum will focus on the effects that EPA's expansive authority has on state and local governments' ability to manage public lands.

Dial 888-752-3232 to Participate

Speaker Biographies

Mr. Tom Collier

Tom Collier leads the Pebble Partnership as its CEO. Mr. Collier is a former U.S. Department of the Interior Chief of Staff during the Clinton administration. He holds extensive experience in navigating the federal environmental permitting process. Prior to joining the Partnership in 2014, Mr. Collier spent 40 years serving as a partner for the law firm Steptoe & Johnson in Washington, D.C. As a senior leader in environmental law and permitting, Mr. Collier has worked on Alaska related projects in his career including development of Alpine, CD-5, and the reauthorization of the Trans-Alaska Pipeline System.

Mr. Shannen W. Coffin

Shannen W. Coffin is a partner in Steptoe's Washington office, where his practice focuses on appellate and regulatory litigation. He frequently represents clients in state and federal trial and appellate courts in matters involving constitutional and administrative law challenges to government regulatory action. His practice spans a wide range of legal subject matters including First Amendment free speech (e.g., libel and commercial speech), the Administrative Procedure Act, federal preemption, state sovereign immunity, commercial and insurance law, and tribal jurisdiction. He has represented numerous regulated industries including energy, financial services, retail, insurance, and defense.

Mr. Coffin's practice draws on his significant experience as a former senior attorney in the federal government. He served as Counsel to Vice President Cheney in the Office of the Vice President of the United States. There, he provided legal advice to the vice president and his staff on constitutional, regulatory, national security and related policy issues, coordinated OVP's response to congressional investigations and litigation, and represented OVP in the inter-agency process with respect to federal regulations and legislation.

Mr. Coffin also served as Deputy Assistant Attorney General in the US Justice Department's Civil Division, where he was responsible for overseeing and coordinating trial litigation on behalf of the federal government for constitutional challenges to federal statutes, statutory and constitutional challenges to agency programs, and defense of national security and anti-terrorism programs. He argued numerous significant litigation matters for the federal government in both trial courts and courts of appeals, including constitutional challenges to presidential action, disputes over access to government information and an intervention by the federal government into a major labor dispute.

Mr. Myron Ebell

Myron Ebell is director of the Center for Energy and Environment at the Competitive Enterprise Institute. He also chairs the Cooler Heads Coalition, which comprises representatives from more than two dozen non-profit organizations based in the United States and abroad that challenge global warming alarmism and oppose energy rationing policies.

Mr. Ebell has worked on energy and environment issues for more than two

decades, spending more than 15 years at CEI researching and advocating for sensible energy policies that benefit everyone. Instead of policies that simply reacts to alarmism, he advocates for climate policies that reflect the scientifically-supported view that affordable, plentiful, and reliable energy make the world safer, the environment more livable, and should be should be accessible to those who need it most.

Mr. Ebell's writings have appeared in a variety of publications, including the *New York Post*, *Wall Street Journal*, *USA Today*, *Washington Post*, *Forbes*, *London's Guardian*, *Standpoint Magazine*, *Riverside Press Enterprise*, *Philadelphia Inquirer*, and Environmental Law Forum. He has appeared as a guest on numerous television shows, including the *ABC Evening News*, *NBC Nightly News*, *PBS News Hour*, *BBC Newsnight*, BBC World, CNBC, CNN, C-SPAN's *Washington Journal*, MSNBC, ITN, Voice of America, Televisa, Sky TV, Al Jazeera, PBS's *NOW*, Fox News's *Special Report* with Bret Baier, O'Reilly Factor, and Hannity and Colmes. He has spoken frequently on a variety of BBC radio news programs and on hundreds of radio talk shows.

Mr. Ebell holds a Bachelor of Arts from Colorado College and an Master of Science from the London School of Economics. He also did graduate work at the University of California at San Diego and at Peterhouse, Cambridge University.

Mr. Robert Perciasepe

Robert Perciasepe serves as president of the nonprofit Center for Climate and Energy Solutions. He served as the Deputy Administrator of the U.S. Environmental Protection Agency during the administration of Barack Obama. Prior to joining the Obama administration, Perciasepe was Chief Operating Officer for the environmental conservation non-profit National Audubon Society. Before that, he served in the administration of President Bill Clinton as the EPA's Assistant Administrator for clean water and then later as the Assistant Administrator for clean air.

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From: Dolley Madison [fedsoc@fed-soc.ccsend.com]
on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 7/9/2018 6:50:06 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Starting Now: The GDPR and the Future of Internet Privacy

The Federalist Society

July 9, 2018

Our Call is Beginning NOW

Dial 888-752-3232 to Participate

The GDPR and the Future of Internet Privacy

Telecommunications & Electronic Media Practice Group and Regulatory Transparency Project

Monday, July 9, 2018 | 3:00 p.m. ET

Sunny Seon Kang
International Consumer Counsel

Dr. Roslyn Layton
Visiting Scholar
American Enterprise Institute

Adam Thierer
Senior Research Fellow
Mercatus Center
George Mason University

Within 7 hours of the EU's General Data Protection Regulation (GDPR) coming into effect, Austrian privacy activist Max Schrems and his non-profit None of Your Business (NOYB) lodged four complaints against Google and Facebook, seeking damages of $8.8 billion. Among its 173 recitals, the GDPR empowers litigants through enumerated rights of representation, judicial remedy, and compensation to create non-profit organizations, lodge complaints, and collect fees on behalf of users. Violations are punishable up to 4 percent of annual revenue. The EU claims that the sweeping regulation empowers consumers to control their data, but seasoned observers note that the law more likely strengthen existing players, those which can afford the $1 million+ compliance costs for new staff and software required by the GDPR. In this Teleforum, privacy and regulatory experts discuss the economic, legal, and geopolitical consequences of the new law and what it could mean for class action litigation.

Dial 888-752-3232 to Participate

Speaker Biographies

Sunny Seon Kang

Sunny Seon Kang is International Consumer Counsel at the Electronic Privacy Information Center (EPIC). Her work at EPIC focuses on U.S. privacy regulations and EU data protection laws. She advocates for the global implementation of the

GDPR to raise online privacy standards. In London, Ms. Kang was a Legal Researcher for the Western Balkans Rule of Law Project and authored judicial guidelines on the right to privacy and freedom of expression under the European Convention on Human Rights. She was a Summer Associate at Allen & Overy UK in the intellectual property litigation department, and worked in Seoul as a Research Fellow at the Innovation, Competition & Regulation (ICR) Law Center. In San Francisco, Ms. Kang was a Legal Extern at the California Department of Justice, Attorney General Kamala Harris' Office, where she produced legislative analyses and policy recommendations on state privacy laws. Prior to joining EPIC, Ms. Kang was a Legal Fellow and Yelp Public Policy Affiliate at TechFreedom on FTC regulatory affairs and consumer privacy. Ms. Kang holds a law degree (LL.B.) from University College London and a Master of Laws (LL.M.) in Intellectual Property and Technology from the UC Berkeley School of Law. She is certified to the New York bar.

Dr. Roslyn Layton

Roslyn Layton is a visiting scholar at the American Enterprise Institute, where she focuses on evidence-based policy for information, communications, and digital technology industries. Using empirical methods, she assesses regulations and policies for digitally connected domains such as mobile wireless, telecom, cable, internet, online advertising, e-government, media, software, financial technology (fintech), and telehealth, among others. Dr. Layton is also a visiting researcher at Aalborg University Center for Communication, Media, and Information Technologies and a vice president at Strand Consult, both in Denmark.

Dr. Layton served on the 2016-17 Federal Communications Commission Presidential Transition Team. She has worked on the adoption of technology by emerging countries, produced independent research on the mobile technology industry, and studied issues such as information technology, telehealth care, and fintech for a variety of firms. She has worked in Europe, India, and the United States.

Her studies and reports include "How Title II harms consumers and innovators" (AEI, 2017) and "Beyond Net Neutrality: Policies for leadership in the information, computing, and network industries" (AEI, 2016). In the popular press, she has been published in *The Wall Street Journal*, *US News & World Report*, and *Forbes*, among others.

Dr. Layton has a Ph.D. in business economics from Aalborg University, an M.B.A. from the Rotterdam School of Management, and a B.A. in international service from American University.

Adam Thierer

Adam Thierer is a senior research fellow with the Technology Policy Program at the Mercatus Center at George Mason University. He specializes in technology, media, Internet, and free-speech policies, with a particular focus on online safety and digital privacy. His writings have appeared in the *Wall Street Journal*, the *Economist*, the *Washington Post*, the *Atlantic*, and *Forbes*, and he has appeared on national television and radio. Mr. Thierer is a frequent guest lecturer and has testified numerous times on Capitol Hill.

Mr. Thierer has authored or edited eight books on topics ranging from media regulation and child safety issues to the role of federalism in high-technology markets. His latest book is *Permissionless Innovation: The Continuing Case for Comprehensive Technological Freedom*.

He contributes to the Technology Liberation Front, a leading tech policy blog. Mr. Thierer has served on several distinguished online safety task forces, including Harvard University's Internet Safety Technical Task Force and the federal government's Online Safety Technology Working Group.

Previously, Mr. Thierer was president of the Progress & Freedom Foundation, director of telecommunications studies at the Cato Institute, and a senior fellow at the Heritage Foundation. Mr. Thierer received his MA in international business management and trade theory at the University of Maryland and his BA in journalism and political philosophy from Indiana University.

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From: McClintic, Howard [McClintH@ctc.com]
Sent: 4/27/2018 2:38:16 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Agreeing with the Controversial Transparency Rule
Attachments: ATT00001.txt; FINAL one page LNT project summary 10-24-17.docx; FINAL LNT Presentation of Howard McClintic.pptx

CTC Foundation

Ensuring the Future Through Innovation, Science and Technology

2711 Jefferson Davis Hwy,, Suite 620
Arlington, VA 22202
(703) 310-5688 (703) 310-5655
FAX
at
(202) 689-4586 Mobile
E-Mail: McClintH@ctc.com

Good Morning Mr. Woods,

My colleague, Dr. Robert (Bob) Golden and I knew that this Transparency Rule was coming and cheer its arrival – Bravo!

Nonetheless, I am haunted when I read the Administrator's urging: that the rule **be lasting**! There is ***only one way*** for this important tectonic change to meet and that is it **be mandated** by a newly formulated, independent Committee of the National Academy of Sciences (NAS). When undertaking their literature review, the NAS Committee Members and Staff will uncover a recently released, peer reviewed, highly credentialed, science-based Report that makes plain that there is a wealth of toxicological and epidemiology data for chemicals and radiation

that will readily yield reproducible as well as transparent regulations.

Administrator Pruitt is unique in recognizing that the mathematical construct that the EPA uses for assessing risk, the linear no-threshold (LNT) methodology, is of **MOST** questionable scientific validity. The LNT model was originally adopted by the National Academy of Sciences (NAS) in 1956 for radiation and in 1977 for chemicals. Because LNT-driven regulations, whether for chemicals or radiation, have, for many years, been claimed to be science-based (see (https://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-113-SY-20131114-SD001%20.pdf as well as http://www.c-span.org/video/?327016-1/epa-administrator-gina-mccarthy-testimony-proposed-regulations), the underlying scientific foundation for such regulations, particularly the LNT model itself, should also, by definition, reflect empirical data. If such scientific data are lacking, as they are for the LNT model, science-based regulatory methodologies (including benefit-cost analyses) for both chemicals and radiation should be updated to reflect significant advancements in scientific knowledge.

Besides introducing you to the fact that the ***CTC Foundation*** has empaneled a prestigious Science Committee that comprised of 15 individuals in the fields of toxicology, radiation biology, evolutionary biology, epidemiology, risk assessment, and economics; the Committee is preparing its FINAL Report that will demonstrate that there is no scientific support for the LNT model and that ample modern data (NOT threshold models) should be

the bases for regulations. In particular, the abundant data generated as part of the Department of Energy's 10 year, $200 million Low Dose Radiation Research Program (LDRRP) will be a central element of the anticipated publication. Collectively, these and other complementary data have elucidated the cellular defense mechanisms by which humans can withstand exposure to low dose radiation without adverse effects.

I have begun to encourage the "doctors in the US Senate" (Barrasso [R-WY] and Cassidy [R-LA]) to introduce and progress legislation in the Senate that would be a companion bill to H.R. 4675, pertaining to the low dose radiation research that Doctor and US Congressman Roger Marshall (R-KS) championed. There are some modifications that Dr. Robert (Bob) Golden and I would advocate, given our respective professional experiences working at NAS, but more on that later. Our overarching Goal is shared: a paradigm shift whereby a **lasting**, scientifically valid approach for radiation and chemical risk assessment as well as for economic benefit-cost analyses be achieved.

Thank you for your time and interest.

Most sincerely yours,

Howard

Howard G. McClintic
Executive Director
202 689 4586

https://www.washingtonpost.com/news/energy-environment/wp/2018/04/24/pruitt-to-unveil-controversial-transparency-rule-limiting-what-research-epa-can-use/?noredirect=on&utm_term=.4f5c21b67c8c

Pruitt unveils controversial 'transparency' rule limiting what research EPA can use

by Juliet Eilperin and Brady Dennis by Juliet Eilperin and Brady Dennis Email the author
Energy and Environment
April 24 at 6:09 PM Email the author

Environmental Protection Agency chief Scott Pruitt listens to President Trump address reporters before a meeting at the White House this month. (EPA-EFE/Shutterstock)

This post has been updated.

Environmental Protection Agency Administrator Scott Pruitt moved Tuesday to limit what science can be used in writing agency regulations, a change long sought by conservatives.

The proposed rule would only allow the EPA to consider studies where the underlying data is made available publicly. Such restrictions could affect how the agency protects Americans from toxic chemicals, air pollution and other health risks.

Pruitt and proponents describe the new approach as an advance for transparency, one that will increase Americans' trust and

confidence in the research on which EPA decisions are based. "Today is a red-letter day," he told a group of supporters at agency headquarters. "The science that we use is going to be transparent. It's going to be **reproducible**."

But a chorus of scientists and public health groups warn that the rule would effectively block the EPA from relying on long-standing, landmark studies on the harmful effects of air pollution and pesticide exposure. Such research often involves confidential personal or medical histories or proprietary information.

The move reflects a broader effort already underway to shift how the EPA conducts and uses science to guide its work. Pruitt has upended the standards for who can serve on its advisory committees, barring scientists who received agency grants for their research while still allowing those funded by industry.

His announcement Tuesday came as the administrator faces increasing heat for ethics and management decisions — from both sides of the political aisle, with even President Trump privately voicing more concern over the growing number of allegations. Pruitt only focused on the proposed rule during his remarks, saying his agency was "taking responsibility for how we do our work and respecting process."

He made clear he intends the new requirements to be lasting ones. "This is not a policy," he said. "This is not a memo."

The proposal will be subject to a 30-day comment period, EPA officials said. Scientific organizations are already campaigning to

block the rule from being finalized. Based on previous court cases, it could prompt legal challenges if implemented.

Former EPA administrator Gina McCarthy said that requiring the kind of disclosure Pruitt envisions would have disqualified the federal government from tapping groundbreaking research, such as studies linking exposure to leaded gasoline to neurological damage or a major 1993 study by Harvard University that established the link between fine-particle air pollution and premature deaths.

Scientists often collect personal data from subjects but pledge to keep it confidential. Researchers will have trouble recruiting study participants if the rule is enacted, she predicted, even if they pledge to redact private information before handing it over to the government.

“The best studies follow individuals over time, so that you can control all the factors except for the ones you’re measuring,” said McCarthy, who now directs the Center for Health and the Global Environment at Harvard’s public health school. “But it means following people’s personal history, their medical history. And nobody would want somebody to expose all of their private information.”

House Science Committee Chairman Rep. Lamar Smith (R-Tex.), who was with Pruitt during his announcement Tuesday, has for years sought to establish a similar requirement. His 2017 legislation, titled the Honest and Open New EPA Science Treatment Act, failed to pass both chambers.

Pruitt and Smith met at EPA headquarters on Jan. 9, according to Pruitt's public calendar, and an email obtained under the Freedom of Information Act indicates that the lawmaker pressed the administrator to adopt the legislation's goal as his own.

Smith made "his pitch that EPA internally implement the HONEST Act [so that] no regulation can go into effect unless the scientific data is publicly available for review," Aaron Ringel, deputy associate administrator for congressional affairs at the EPA, wrote other agency staffers. His email was obtained by the Union of Concerned Scientists, a scientific advocacy organization.

Conservatives, such as Trump EPA transition team member Steve Milloy, have long tried to discredit independent research the agency used to justify limiting air pollution from burning coal and other fossil fuels. A series of studies has shown that fine particulate matter, often referred to as soot, enters the lungs and bloodstream and can cause illnesses such as asthma and even premature death.

"During the Obama administration, the EPA wantonly destroyed 94 percent of the market value of the coal industry, killed thousands of coal mining jobs and wreaked havoc on coal mining families and communities," Milloy said in a statement, "all based on data the EPA and its taxpayer-funded university researchers have been hiding from the public and Congress for more than 20 years."

While the administration presses ahead, legal experts warn that the rule may be vulnerable to a court challenge. In unanimous decisions in 2002 and 2010, the U.S. Court of Appeals for the

District of Columbia Circuit said the EPA is not legally obligated to obtain and publicize the data underlying the research it considers in crafting regulations.

In the 2002 case, brought by the American Trucking Associations, two judges appointed by Ronald Reagan and one named by Bill Clinton wrote that they agreed with the agency that such a requirement "would be impractical and unnecessary." The government's defense had noted that "EPA's reliance on published scientific studies without obtaining and reviewing the underlying data is not only reasonable, it is the only workable approach."

A range of scientific organizations are already campaigning to block the rule from being finalized. On Monday, 985 scientists signed a letter organized by the Union of Concerned Scientists, urging Pruitt not to forge ahead with the policy change.

"There are ways to improve transparency in the decision-making process, but restricting the use of science would improve neither transparency nor the quality of EPA decision-making," they wrote. "If fully implemented, this proposal would greatly weaken EPA's ability to comprehensively consider the scientific evidence across the full array of health studies."

Under the proposed rule, third parties would be able to test and try to replicate the findings of studies submitted to the EPA. But, the scientists wrote, "many public health studies cannot be replicated, as doing so would require intentionally and unethically exposing people and the environment to harmful contaminants or recreating one-time events."

Gretchen Goldman, an expert on air pollution and research director for the organization's Center for Science and Democracy, said the rule could put some scientists in a quandary: Keeping personal health data or propriety information private would mean having their work ignored by the EPA.

"We have this incredible science-based process that works, and it has worked, by and large, even in the face of tremendous political pressures to not go with a science-based decision," Goldman said.

The Environmental Protection Network, a group of former EPA employees, issued a report Tuesday stating that many older studies — in which the original data sets were either not maintained or stored in outdated formats — would be eliminated under the proposed rule.

And while there is no estimate yet for how much it would cost EPA to obtain and disseminate studies' underlying data, the Congressional Budget Office has projected that Smith's measure, if enacted, would cost the agency $250 million for initial compliance and then between $1 million and $100 million annually. A 2015 CBO analysis estimated that EPA would cut the number of studies it relies on by half because of the bill's requirements.

Geophysicist Marcia McNutt, who is president of the National Academy of Sciences, said Tuesday that she is concerned the rule would prevent the EPA from relying on the best available scientific evidence.

"This decision seems hasty," she wrote in an email. "I would be fearful that the very foundations of clean air and clean water could be undermined."

Yet the American Chemistry Council praised Pruitt's effort. "Our industry is committed to working with EPA to help ensure the final rule increases transparency and public confidence in the agency's regulations," its statement said, "while protecting personal privacy, confidential business information, proprietary interest and intellectual property rights."

Joel Achenbach and Dino Grandoni contributed to this report.

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Message

From: Bolen, Brittany [bolen.brittany@epa.gov]
Sent: 4/30/2018 3:58:07 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: FW: Cooler Heads Coalition next meeting reminder and EPA's secret science reforms

From: Myron Ebell [mailto:Myron.Ebell@cei.org]
Sent: Monday, April 30, 2018 11:14 AM
To: Myron Ebell <Myron.Ebell@cei.org>
Subject: Cooler Heads Coalition next meeting reminder and EPA's secret science reforms

The Cooler Heads Coalition will hold its May strategy meeting on Monday, 14th May, beginning at 12 noon at CEI, 1310 L Street, N. W., Seventh Floor. Please e-mail or ring me at 331-2256 with questions or agenda items.

EPA's Scientific Transparency Reforms:

EPA Administrator Scott Pruitt on 24th April announced a proposed rule to end the use of secret science (and make other science reforms) in EPA's regulatory process. The press release is here: https://www.epa.gov/newsreleases/epa-administrator-pruitt-proposes-rule-strengthen-science-used-epa-regulations. The link to the proposed rule is at https://www.epa.gov/newsroom/proposed-rule-strengthening-transparency-regulatory-science.

One week before Pruitt's announcement, the National Association of Scholars published an important study by David Randall and Christopher Welser on ***The Irreproducibility Crisis of Modern Science***. Here is the link: https://www.nas.org/projects/irreproducibility_report.

Pruitt deserves lots of credit and so do many people who have worked for decades for scientific transparency. I'll mention only two here: Steve Milloy of JunkScience.com and Representative Lamar Smith, Chairman of the House Science, Space, and Technology Committee. Steve, a charter member of the Cooler Heads Coalition, has ongoing coverage of the controversy at JunkScience.com. Here is Chairman Smith's statement: https://science.house.gov/news/press-releases/smith-remarks-administrator-pruitt-s-scientific-transparency-announcement.

The blowback from environmental pressure groups and the junk science community has been amusing to watch. They are all for transparency and reproducibility, but not for requiring it when using junk science to justify costly new rules. Here are some examples:
http://thehill.com/opinion/energy-environment/384898-epa-proposal-will-hobble-good-science-and-harm-american-families
https://s3.amazonaws.com/ucs-documents/science-and-democracy/secret-science-letter-4-23-2018.pdf;
https://www.popsci.com/epa-transparency-public-health-data

Here are three news stories that toe the party line:
https://www.washingtonpost.com/news/energy-environment/wp/2018/04/24/pruitt-to-unveil-controversial-transparency-rule-limiting-what-research-epa-can-use/?noredirect=on&utm_term=.29e5569ee37d
https://www.huffingtonpost.com/entry/pruitt-epa-transparency-rule-science_us_5adf44a8e4b07560f395fb16
http://www.latimes.com/politics/la-na-pol-epa-science-20180424-story.html

Although it isn't easy to argue against scientific transparency, the campaign against EPA's reforms is going to be intense. We will need to gear up to counter the mis-information from the environmental pressure groups and spread by the mainstream media. Angela Logomasini, my CEI colleague, does a good job in this article published on the Hill blog:
http://thehill.com/opinion/energy-environment/385411-pruitts-rule-ending-secret-science-is-pro-science-pro-consumer

Myron Ebell
Director, Center for Energy and Environment
Competitive Enterprise Institute
1310 L Street, N. W., Seventh Floor
Washington, DC 20005, USA
Tel direct: (202) 331-2256
Tel mobile: (202) 320-6685
E-mail: Myron.Ebell@cei.org
Stop continental drift!

Message

From: American Energy Alliance [info=americanenergyalliance.org@mail55.wdc01.mcdlv.net]
on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 7/20/2018 2:33:59 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Finally, some common sense from Washington...

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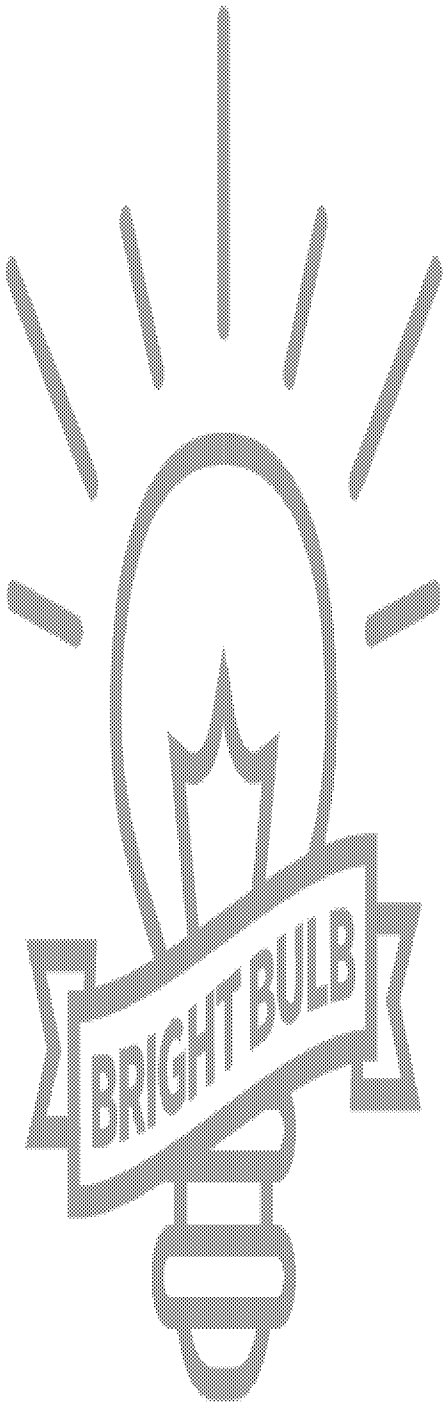
The line in the sand.

Washington Examiner (7/19/18) reports: "The House easily approved a non-binding, GOP-leadership-backed resolution Thursday declaring a potential carbon tax to combat climate change harmful to the economy. 'A carbon tax would be devastating to the manufacturing base, kill jobs, and rise costs for families all across this country,' Majority Whip Steve Scalise, R-La., who sponsored the resolution, said on the House floor before the vote. 'The resolution is simple. It's a sense of Congress that a carbon tax would be detrimental to American families and business'... The Republicans [who voted against] are Reps. Carlos Curbelo, Ileana Ros-Lehtinen, and Francis Rooney of Florida, Brian Fitzpatrick of Pennsylvania, Trey Hollingsworth of Indiana, and Mia Love of Utah. Seven Democrats, meanwhile, voted to support the resolution."



"Instead of increasing taxes, policymakers ought to create an economic environment that would cultivate innovation, increase jobs, and drive competition. Scalise and McKinley's resolution is a step in the right direction. It is hoped their proposal will convince Americans that a carbon-dioxide tax would, contrary to tax proponents' claims, perpetuate climate change and reduce quality of life."

– H. Sterling Burnett,
The Heartland Institute

Another one bites the dust

The Daily Caller (7/19/18) reports: "A federal judge tossed a lawsuit New York City brought against five major oil companies, demanding compensation for the alleged damages from man-made global warming... It's the third such lawsuit brought against oil companies ExxonMobil, Chevron, BP, Royal Dutch Shell and ConocoPhillips. A U.S. District Court judge in Northern California struck down identical lawsuits in June brought by the cities of San Francisco and Oakland."

Time to phone a friend, Elon?

E&E News (7/19/18) reports: "Elon Musk personally dialed up the head of the environmental group the Sierra Club and asked for help with deflecting criticism

over donations that the chairman of Tesla Inc. made to Republicans, according to an email that the head of the nonprofit sent to his staff."

Yikes!

Washington Examiner (7/19/17) reports: "President Trump's plan to save coal and nuclear power plants could cost a whopping $17.2 billion per year, a new study funded by opponents of the bailout said Thursday. The report by the consulting and engineering firm Brattle looked at two scenarios to assess the possible cost of a Trump power plant bailout that range from $16.7 billion to

17.2, far exceeding a recent estimate from a coal group that said it would cost $4 billion per year."

About time...

The New York Times (7/19/17) reports: "The Interior Department on Thursday proposed the most sweeping set of changes in decades to the Endangered Species Act, the law that brought the bald eagle and the Yellowstone grizzly bear back from the edge of extinction but which Republicans say is cumbersome and restricts economic development. The proposed revisions

have far-reaching implications, potentially making it easier for roads, pipelines and other construction projects to gain approvals than under current rules. One change, for instance, would eliminate longstanding language that prohibits considering economic factors when deciding whether or not a species should be protected."

Our coalition has made an impact. If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance
Myron Ebell, Americans for Competitive Enterprise, Competitive Enterprise Institute
Phil Kerpen, American Commitment
William O'Keefe, George C. Marshall Institute
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Joe Bast, Heartland Institute
David Ridenour, National Center for Public Policy Research
Michael Needham, Heritage Action for America
Grover Norquist, Americans for Tax Reform
Sabrina Schaeffer, Independent Women's Forum

George Landrith, Frontiers of Freedom

Thomas A. Schatz, Citizens Against Government Waste

Richard Manning, Americans for Limited Government

Adam Brandon, FreedomWorks

Rich Collins, Positive Growth Alliance

Craig Richardson, E&E Legal

The Honorable George Allen, American Energy Freedom Center

Dick Patten, American Business Defense Council

Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute

Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $70.24

Natural Gas: ↑ $2.77

Gasoline: $2.85

Diesel: $3.16

Heating Oil: ↑ $210.63

Brent Crude Oil: ↑ $73.15

US Rig Count: ↓ 1122

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on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 4/27/2018 12:35:01 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: New at The Federalist Society

Inaugural Wisconsin Lawyers Chapters Conference, New Videos, New Podcasts

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April 27, 2018

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Chapter	*Topic & Speakers*	*Date & Time*
Sacramento Lawyers Chapter	Textualism and Separation of Powers • **Dr. Sohan Dasgupta,** J.D. Berkeley, Ph.D., Cambridge	May 2 12:00 p.m.
Phoenix Lawyers Chapter	The Death of Chevron • **Tom Collins,** Executive Director, Arizona Clean Elections Commission • **William Eskridge, Jr.,** John A. Garver Professor of Jurisprudence, Yale Law School • **Hon. Patricia Starr,** Lower Court of Appeals, Maricopa County Superior Court	May 2 6:00 p.m.
Montgomery Federalist Society Chapter & State AGs Project	Alabama Attorney General Candidate Forum • **Chess Bedsole,** Former Criminal Court Judge & Senior Counsel to DOJ • **Chris Christie,** Former Trial Lawyer, Bradley Arant Boult Cummings LLP • **Alice Howze,** Former Alabama Chief Deputy & Deputy Attorney General • **Steve Marshall,** Alabama Attorney General • **Moderator: Allen Mendenhall,** Associate Dean and Executive Director, Blackstone & Burke Center for Law & Liberty, Faulkner University	May 2 6:00 p.m.
Columbia Lawyers Chapter	May Luncheon with Daniel Blomberg • **Daniel Blomberg,** The Becket Fund for Religious Liberty	May 3 12:00 p.m.
Indianapolis Lawyers Chapter	What Can Trump Teach Conservatives • **David Azerrad,** Director, B. Kenneth Simon Center for Principles and Politics, The Heritage Foundation	May 3 12:00 p.m.
New York City Lawyers Chapter	Gerald Walpin Memorial Lecture	May 3 6:00 p.m.

- **Amy Wax,** Robert Mundheim Professor of Law, University of Pennsylvania Law School

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New Online

[ARTICLE] Court Limits US Lawsuits Over Foreign Corporate Conduct

Global Governance Watch

The US Supreme Court has rejected a lawsuit under the Alien Tort Statute against a foreign bank accused of helping to finance terrorist activities outside the US, sharply limiting the ways in which people may seek redress from foreign corporations in US courts for alleged human rights violations.
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Administrative Cancellation of Patents: Regulatory Overreach at the Patent Office?

- Featuring Hon. Paul R. Michel, Prof. Adam Mossoff, Prof. Arti K. Rai, Prof. Melissa Wasserman, Hon. Stephen F. Williams (moderator)

The Role and Responsibility of the Government Employee

- Featuring Theodore Cooperstein, Hon. Stuart F. Delery, G. Roger King, David W. Ogden, John C. O'Quinn (moderator)

The Mechanics of Regulatory Reform

- Featuring Ilona Cohen, Steven P. Croley, Jeffrey M. Harris, Hon. Jeffrey A. Rosen, Hon. Laurence H. Silberman (moderator)

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- Featuring Hon. Donald McGahn (opening remarks), Philip K. Howard, Prof. Jennifer L. Mascott, Tammy D. McCutchen, Bill Valdez, Hon. A. Raymond Randolph (moderator)

The Future of the Internet and American Leadership

- Featuring Hon. Brendan Carr (opening remarks), Hon. David J. Redl (opening remarks), Prof. Michelle P. Connolly, Brad Gillen, Hon. Chip Pickering, Mr. Bryan Tramont (moderator)

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- Featuring William S. Consovoy, Michael J. Fischer, Prof. Alan Morrison, Prof. Ernest A. Young, Stuart S. Taylor, Jr. (moderator)

Disparate Impact

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Constitutional Justice in Europe: Chairman Shevchuk

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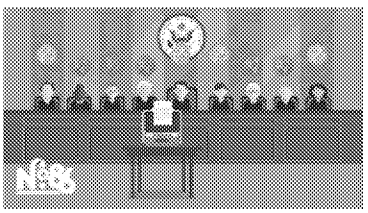

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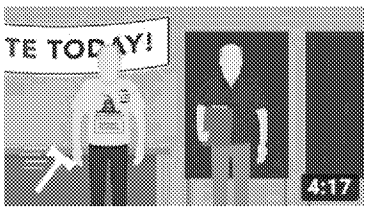

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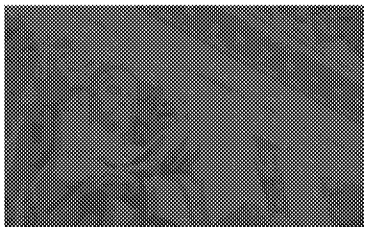

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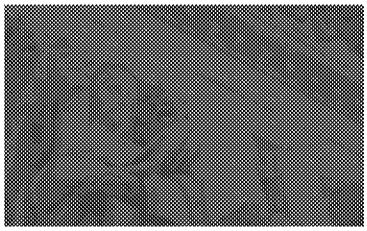

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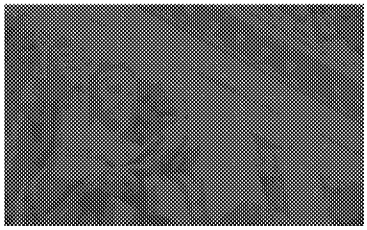

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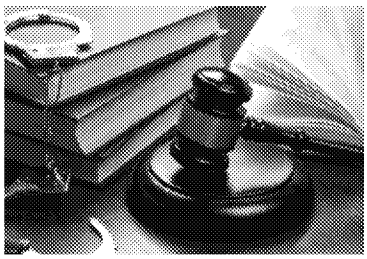

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Litigation Practice Group
Featuring Gregory Dolin, Kevin B. Muhlendorf
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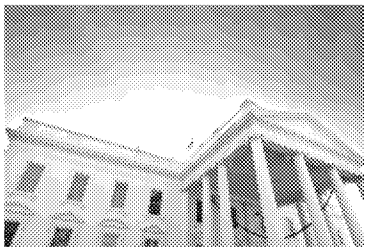

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[PODCAST] Courthouse Steps: Oil States Energy Services v. Greene's Energy Group Decided

Intellectual Property Practice Group
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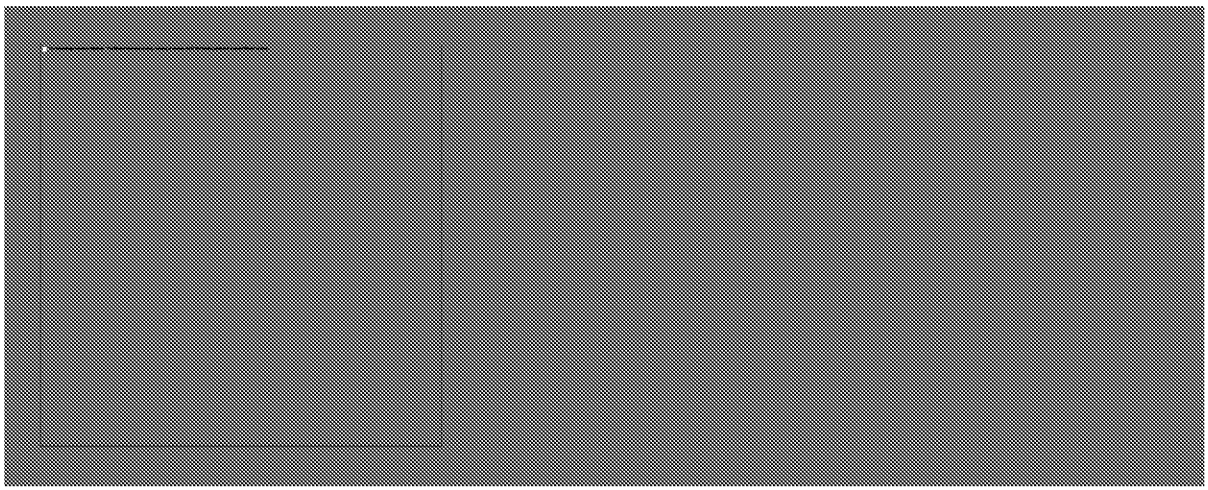
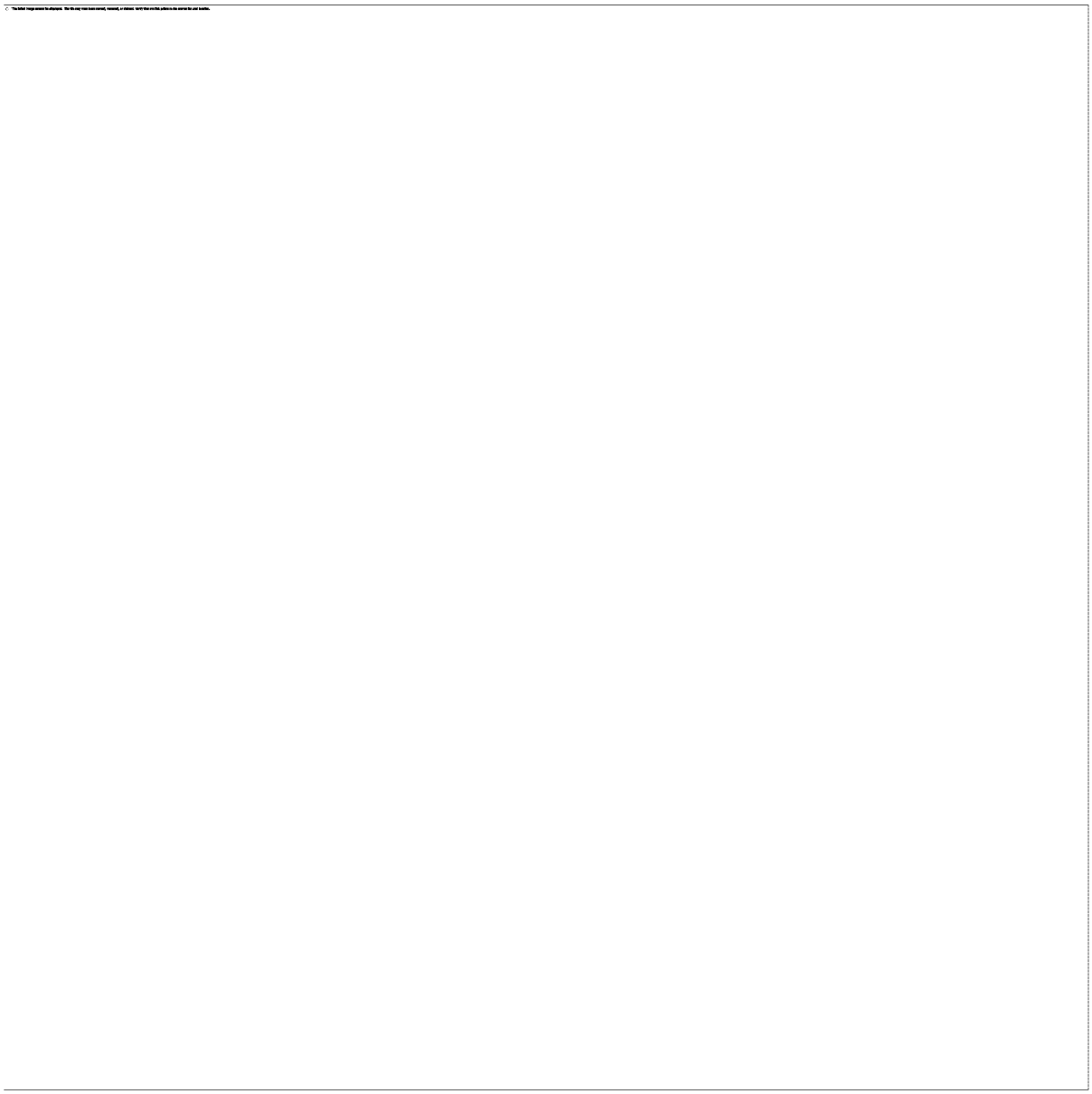
Message

From: Institute for Energy Research [info@ierdc.org]
Sent: 5/9/2019 1:37:27 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Kids In The Courthouse



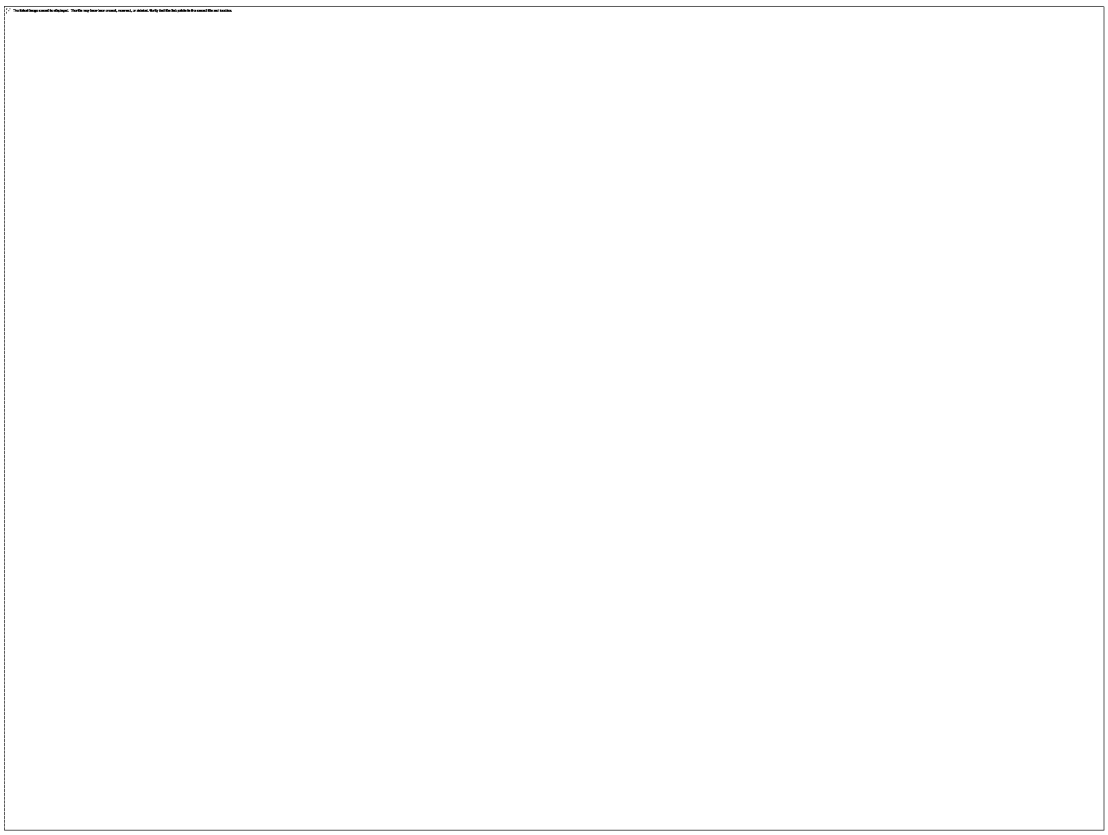


SURGING

Americans are blessed to live in a democratic republic. Individuals and organizations that seek to effect political change must garner votes by making

their cases to elected officials or the people themselves. But radical environmentalists have discovered that when votes on legislative proposals and referenda do not turn out in their favor, there is a backdoor to political power.

Learn how the green left has embarked on a reckless crusade to enact sweeping societal changes through court order in a coordinated campaign using children in courtrooms across the country to try and force America to adopt policies like the Green New Deal.



Learn more about environmental activism by court order.

From The Studios

The Trump Administration Working On Energy Infrastructure.

IER's Kenny Stein joined *The Sam Sorbo Show* to discuss President Trump's recent actions to reign in the ability of radical environmentalists to stop the construction of critically needed natural gas pipelines. Learn how the administration is working to promote the development of energy infrastructure. Listen now to *The Sam Sorbo Show starting at the 87:00 minute mark.*

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- The Afterlife of Electric Vehicles: Battery Recycling and Repurposing
- U.S. Reached Record Energy Consumption in 2018; Fossil Energy Supplied 80 Percent
- Pipeline Bans Make Transporting Natural Gas by Rail an Economic Necessity

THE WIRE

IER News Highlights

- IER's Dan Kish quoted in *The Daily Caller* on plans in Congress to vote on rejoining the Paris Climate Agreement
- IER's research on carbon taxes highlighted by the Heartland Institute

THE BUZZ

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THE BREAKER

"Reversing New York's de facto ban on the construction of new natural gas pipelines will increase the supply of a reliable and clean American-made fuel to consumers in New York and New England, reducing the cost to heat and light homes while also significantly reducing the region's reliance on energy imported from overseas."

– Chuck DeVore, Vice President of National Initiatives at the Texas Public Policy Foundation

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Message

From: Dolley Madison [fedsoc@fed-soc.ccsend.com]
on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 5/21/2018 2:35:45 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Calls This Week -- May 21, 2018

THE FEDERALIST SOCIETY
PRACTICE GROUPS

May 21, 2018

Teleforum Calls This Week

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The Case for Political Appointment of Judges

A Teleforum Sponsored by the State Courts Project

Monday, May 21, 2018 | 1:00 p.m. ET

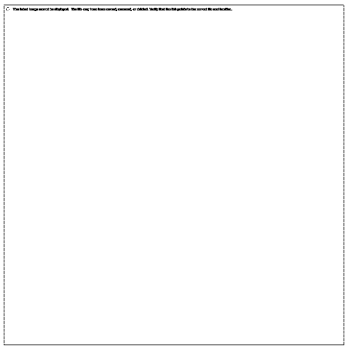
Prof. Brian T. Fitzpatrick
Professor of Law
Vanderbilt University Law School

Prof. Stephen J. Ware
Professor of Law
University of Kansas School of Law

Join us in a discussion with our experts, Professor Brian Fitzpatrick and Professor Stephen Ware, as we review *The Case for Political Appointment of Judges*, a new white paper from Professor Fitzpatrick which argues that political appointment is the best way to select state judges. This paper is a part of a series of papers commissioned by the Federalist Society on the leading methods of state judicial selection. The first paper in the series made the case for partisan judicial elections, and a future paper will make the case for commission-based appointment (the Missouri plan).

Preview: *Frank v. Gaos*

Litigation Practice Group Teleforum
Wednesday, May 23, 2018
|
12:00 PM ET



Theodore H. Frank
Director of Litigation
Competitive Enterprise Institute

On April 30, the Supreme Court granted cert in *Frank v. Gaos*, an appeal of a Ninth Circuit decision affirming a District Court cy pres class action settlement. The petitioner claims that because the class action members received no direct relief, the award does not support class certification and violates Rule 23 of the Federal Rules of Civil Procedure requiring a settlement binding class members to be "fair, reasonable, and adequate." Ted Frank, petitioner in the case and member of the Federalist Society Litigation Practice Group, will join us to discuss this important case.

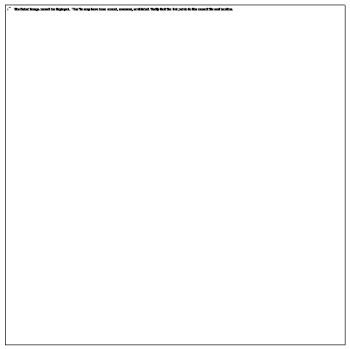
Speak Freely: Why Universities Must Defend Free Speech

Free Speech & Election Law Practice Group and Faculty Division Teleforum

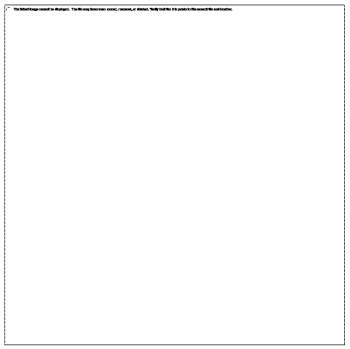
Thursday, May 24, 2018

|

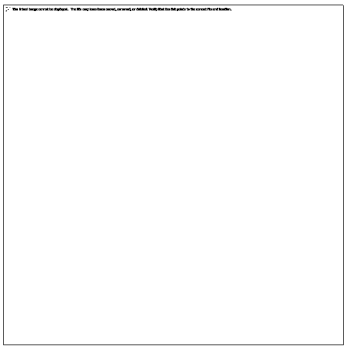
2:00 p.m. ET



Prof. Frederick Schauer
David and Mary Harrison Distinguished Professor of Law
University of Virginia School of Law



Prof. Keith E. Whittington
William Nelson Cromwell Professor of Politics Princeton University



Moderator: Anthony M. Deardurff
Deputy Director
Faculty Division
The Federalist Society

In *Speak Freely*, Prof. Whittington argues that universities have a distinctive and important mission in American society. They assemble and nurture an open and diverse community of scholars, teachers and students dedicated to the production and dissemination of knowledge. The robust protection of free speech and civil discourse is essential to that mission. Better understanding the relationship between the critical functions of the university and the principles of free speech can help guide us in resolving the difficult challenges that confront the members of modern universities.

Join us for a Teleforum discussion of Prof. Whittington's book with Prof. Frederick Schauer, moderated by the Federalist Society's Faculty Division Deputy Director Anthony Deardurff.

Previously Recorded Calls

Courthouse Steps: *Jesner v. Arab Bank* Decided
Litigation Practice Group Teleforum

On April 24, *Jesner v. Arab Bank* was decided 5-4 in favor of the respondent.

The petitioners in this case were surviving victims or families affected by a series of terrorist attacks that occurred over a 10-year period along the Gaza Strip and West Bank of Israel. Arab Bank knowingly accepted donations, paid suicide bombers' families, and maintained accounts for the terrorists who committed these acts. Arab Bank holds a small division in the United States, which it uses for money transfers. Petitioners claimed that since Arab Bank has connection to the United States they could sue the corporation for damages in U.S. federal court under the 1789 Alien Tort Act.

Prof. Samuel Estreicher and Prof. William Casto joined us to discuss the decision.

[Listen]

Courthouse Steps Decision: *McCoy v. Louisiana*

Criminal Law & Procedure Practice Group Podcast

Robert McCoy was charged with the murder of three of his family members in Bossier City, Louisiana. The state brought capital charges against him, but McCoy maintained his innocence - claiming he was not even in the state at the time of the murders - and demanded a jury trial. But in light of the evidence against him, McCoy's lawyer thought the best trial strategy would be to admit guilt to the jury and hope for leniency in sentencing. McCoy adamantly opposed this plan, but his lawyer pursued it anyway and told the jury that McCoy was guilty. The jury returned three murder convictions and sentenced McCoy to death. The Supreme Court has just issued a decision holding, 6-3, that it was unconstitutional for McCoy's lawyer to admit guilt to the jury over McCoy's express objection. The Court noted that whether to admit guilt is not a strategic question about how to achieve a client's objectives, but a fundamental question about what a client's objectives actually are.

Therefore, the Sixth Amendment guarantees that the defendant, not his lawyer, has the final say on this question, and that McCoy must receive a new trial in which his attorney will defend his professed innocence and put the state to its burden of proof.

[Listen]

In Memoriam: Ron Rotunda

Professional Responsibilities & Legal Education Practice Group Teleforum

In this Teleforum, Prof. Ely of Vanderbilt Law, Prof. Presser of Northwestern, and our Professional Responsibilities Practice Group Chair Jack Park will join us to discuss Prof. Rotunda's newest book, *John Marshall and the Cases that United the States of America*. Professor Ronald Rotunda is well known in the Federalist Society community. He passed away unexpectedly March 14, 2018. He was also an active member of the Federalist Society leadership, serving on the Executive Committee of the Professional Responsibilities Practice Group for over a decade and participating in the National Lawyers Convention, CLE Teleforum calls, and podcasts.

[Listen]

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Message

From: Koerber, Mike [Koerber.Mike@epa.gov]
Sent: 5/30/2018 2:59:04 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: FW: SAB Follow Up
Attachments: Draft - SAB Response - Cover Letter 5-29-18.docx

Clint: Just two comments:

Deliberative Process / Ex. 5

Mike

From: Tsirigotis, Peter
Sent: Tuesday, May 29, 2018 8:40 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: Fwd: SAB Follow Up

Kevin, let mike know if you have thoughts.

Begin forwarded message:

> **From:** "Woods, Clint" <woods.clint@epa.gov>
> **Date:** May 29, 2018 at 8:08:36 PM EDT
> **To:** "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>, "Shoaff, John" <Shoaff.John@epa.gov>, "Dunham, Sarah" <Dunham.Sarah@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>, "Harlow, David" <harlow.david@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Lewis, Josh" <Lewis.Josh@epa.gov>, "Schwab, Justin" <Schwab.Justin@epa.gov>
> **Subject: RE: SAB Follow Up**
>
> Thank you all so much for the quick turnaround – Attached is a draft cover letter for Bill's review, followed by the combined information on the OAR actions as an attachment. Please feel free to send any major edits/red flags my way by 10:00 tomorrow.
>
> ---
>
> **From:** Hengst, Benjamin
> **Sent:** Tuesday, May 29, 2018 4:10 PM
> **To:** Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Shoaff, John <Shoaff.John@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
> **Subject:** RE: SAB Follow Up
>
> **Deliberative Process / Ex. 5**
> explicit.
>
> Thanks, Ben

From: Tsirigotis, Peter
Sent: Tuesday, May 29, 2018 2:30 PM
To: Woods, Clint <woods.clint@epa.gov>; Shoaff, John <Shoaff.John@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: RE: SAB Follow Up

Hi everyone. Attached are the narratives for the 3 stationary source rules. Product is an OAP/OAQPS team effort.

From: Woods, Clint
Sent: Friday, May 25, 2018 7:27 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Shoaff, John <Shoaff.John@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: SAB Follow Up
Importance: High

All,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks in advance!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

Message

From: subscription@copernicus.org [subscription@copernicus.org]
Sent: 11/2/2018 7:00:32 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: ACP article alert

Dear Alert Subscriber,

We are pleased to inform you about the publication of the following articles that match your alert selection:

ACP Discussions
Measurements of spectral irradiance during the solar eclipse of 21 August 2017: reassessment of the effect of solar limb darkening and of changes in total ozone
by Germar Bernhard and Boyan Petkov
https://www.atmos-chem-phys-discuss.net/acp-2018-1048/
Short Summary: Solar radiation at ultraviolet, visible, and infrared wavelengths was measured during the total solar eclipse of 21 August 2017. Data were used to study the wavelength-dependent changes of solar radiation at Earth's surface and to validate parameterizations of solar limb darkening (LD), which describes the change of the Sun's brightness between its center and its edge. The study highlights the importance of the LD effect when calculating total ozone and aerosol optical depth during an eclipse.

ACP
Simulating secondary organic aerosol from anthropogenic and biogenic precursors: comparison to outdoor chamber experiments, effect of oligomerization on SOA formation and reactive uptake of aldehydes
by Florian Couvidat, Marta G. Vivanco, and Bertrand Bessagnet
https://www.atmos-chem-phys.net/18/15743/2018/
Short Summary: Several new parameterizations and mechanisms for SOA formation are developed based on available experimental results. To evaluate the parameterizations, a box model was developed to simulate SOA formation from monoterpenes and aromatics in the environmental chamber EUPHORE. This box model takes oligomerization, nonideality of the aerosol, multiphase partitioning, aging, vapor wall losses and particle-phase diffusion into account. All these phenomena are rarely taken into account together.

ACP
Additional global climate cooling by clouds due to ice crystal complexity
by Emma Järvinen, Olivier Jourdan, David Neubauer, Bin Yao, Chao Liu, Meinrat O. Andreae, Ulrike Lohmann, Manfred Wendisch, Greg M. McFarquhar, Thomas Leisner, and Martin Schnaiter
https://www.atmos-chem-phys.net/18/15767/2018/
Short Summary: Using light diffraction it is possible to detect microscopic features within ice particles that have not yet been fully characterized. Here, this technique was applied in airborne measurements, where it was found that majority of atmospheric ice particles have features that significantly change the way ice particles interact with solar light. The microscopic features make ice-containing clouds more reflective than previously thought, which could have consequences for predicting our climate.

ACP
Effective radiative forcing in the aerosol-climate model CAM5.3-MARC-ARG
by Benjamin S. Grandey, Daniel Rothenberg, Alexander Avramov, Qinjian Jin, Hsiang-He Lee, Xiaohong Liu, Zheng Lu, Samuel Albani, and Chien Wang
https://www.atmos-chem-phys.net/18/15783/2018/
Short Summary: Anthropogenic emissions of aerosol particles likely cool the climate system. We investigate the uncertainty in the strength of the cooling effect by exploring the representation of aerosols in a global climate model. We conclude that the specific representation of aerosols in global climate models has important implications for climate modelling. Important factors include the representation of aerosol mixing state, size distribution, and optical properties.

ACP Discussions
Statistics on clouds and their relation to thermodynamic conditions at Ny-Ålesund using ground-based sensor synergy
by Tatiana Nomokonova, Kerstin Ebell, Ulrich Löhnert, Marion Maturilli, Christoph Ritter, and Ewan O'Connor
https://www.atmos-chem-phys-discuss.net/acp-2018-1144/
Short Summary: In this study, properties of clouds at the French-German Arctic Research station in Ny-Ålesund are related to in-cloud thermodynamic conditions. The used dataset was collected within the Arctic Amplification project with a set of active and passive remote instruments. The results are compared with a model output. A significant divergence in observations and modelling of single layer ice and mixed-phase clouds was found.

ACP Discussions
Trends and trend reversal detection in two decades of tropospheric NO2 satellite observations
by Aristeidis K. Georgoulias, Ronald J. van der A, Piet Stammes, K. Folkert Boersma, and Henk J. Eskes

https://www.atmos-chem-phys-discuss.net/acp-2018-988/
Short Summary: In this paper, a ~ 21-years self-consistent global dataset from four different satellite sensors is compiled for the first time to study the long-term tropospheric NO2 patterns and trends. A novel method capable of detecting the year when a reversal of trends happened shows that tropospheric NO2 concentrations switched from positive to negative trends and vice versa over several regions around the globe during the last two decades.

ACP
Impacts of shipping emissions on PM2.5 pollution in China
by Zhaofeng Lv, Huan Liu, Qi Ying, Mingliang Fu, Zhihang Meng, Yue Wang, Wei Wei, Huiming Gong, and Kebin He
https://www.atmos-chem-phys.net/18/15811/2018/
Short Summary: This study comprehensively analyzed the impacts of the marine transport sector to the concentrations of PM2.5 and its components in eastern China on multiple temporal and spatial scales. Furthermore, a source-oriented CMAQ was used to identify the contributions of shipping emissions from different maritime areas to the inland air quality. This work supplemented the insufficiency of multi-scale researches on the influences of the shipping sector on the inland air quality.

You can manage your ACP alerts at: https://editor.copernicus.org/ACP/alert_manage/20574/6f061gsvw5un79bj

Thank you very much for your interest. Please contact me for assistance.

Kind regards,

Natalie Walter
Copernicus Publications
subscription@copernicus.org

Message

From: Erin Amsberry | AEA [eamsberry@energydc.org]
Sent: 5/9/2019 1:05:43 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Free Market Coalition to Congress: No EV Tax Credit Expansion

AEA AMERICAN ENERGY ALLIANCE

FOR IMMEDIATE RELEASE
May 9, 2019

MEDIA CONTACT: ERIN AMSBERRY
202.621-2955

Free Market Coalition to Congress: No Electric Vehicle Tax Credit Expansion

WASHINGTON – Today, a coalition of 34 organizations, led by the American Energy Alliance, sent a letter to several members of Congress expressing their unified opposition to any effort to expand the electric vehicle tax credit.

The coalition includes the Texas Public Policy Foundation, FreedomWorks, Heritage Action for America, the Competitive Enterprise Institute and 30 others stating that expanding the tax credit would be fiscally reckless. The coalition believes that electric vehicles, like all other products in the marketplace, should succeed or fail on their merits, without unnecessary government intervention forcing wealth transfer between states. Other points communicated in the letter include:

Subsidies for electric vehicles are unpopular. As shown in recent polling, 67% of voters believe they should not be forced to subsidize electric vehicle purchases.

Subsidies for electric vehicles overwhelmingly benefit the rich. A recent study from the Pacific Research Institue found that 79% of electric vehicle tax credits were claimed by households with an adjusted gross income of more than $100,000 a year.

Expanding the electric vehicle tax credit will be a net harm to consumers. A recent study from NERA economists found that extending the tax credit reduces total personal income of all U.S. households by $7 billion in 2020 and $12 billion in 2035.

Read the full letter and view the signers here

AEA President Tom Pyle made the following statement:

"Extending the tax loophole for electric vehicles helps rich people, Californians, companies that already don't pay taxes, and China, which owns many of the resources required to build and operate these vehicles. The loophole disproportionally transfers money from middle class taxpayers to rich people, mostly from California. It hurts the working class, people who buy cars, trucks, crossovers, and SUVs, and those American companies not seeking to expand the loophole for their own benefit. We are proud to have over thirty organizations stand with us to tell Congress that a vote to expand the electric vehicle tax loophole is a vote against American families and workers. It is just that simple."

Mandy Gunasekara, former Trump EPA Official and Founder of Energy 45 made the following statement:

"In 2017, 128 electric vehicles were sold in Mississippi, compared to the nearly 95,000 electric vehicles sold in California. A system that forces hardworking Mississippians to subsidize wealthy Californians ability to drive around in luxury electric vehicles is simply unfair."

Center of the American Experiment

Energy 45 Fund

Competitive Enterprise Institute

PRI Pacific Research Institute

John Locke Foundation

FreedomWorks

Freedom Prosperity

Freedom Foundation of Minnesota

Frontiers of Freedom
Securing the Blessings of Liberty

AmericanCommitment

MacIver Institute
The Free Market Voice for Wisconsin

The Heartland Institute

Texas Public Policy Foundation

Independence Institute.org

CO2 Coalition

EarthJustice Legal
Energy & Environment Legal Institute

Alaska Policy Forum

NBCC National Black Chamber of Commerce

Less Government Is Better

Committee to Unleash Prosperity

Americans for Limited Government

ClearEnergy Alliance

Taxpayers Protection Alliance

CFIF Center for Individual Freedom

Mackinac Center for Public Policy

National Tax-Limitation Committee

Texas Alliance of Energy Producers

Heritage Action for America

ALEC Action

CASE Consumer Action for a Strong Economy

The Club for Growth

AEA American Energy Alliance

For media inquiries, please contact Erin Amsberry
eamsberry@energydc.org
202.621.2955

AEA is a not-for-profit organization that engages in grassroots public policy advocacy and debate concerning energy and environmental issues. AEA is the advocacy arm of the Institute for Energy Research, a tax-exempt public foundation that conducts intensive research and analysis on global energy markets.

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Message

From: Regulatory Transparency Project [rtp=regproject.org@mail124.suw111.mcdlv.net]
on behalf of Regulatory Transparency Project [rtp@regproject.org]
Sent: 5/7/2018 5:59:54 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Your Regulatory Transparency Project Newsletter

Regulatory Transparency Project

What's New?

[Free Lunch] Tennessee Licensing Board Alarmed by Entrepreneur's Facial Recognition Software

Featuring Adam Jackson (Edge AI) and Braden Boucek (Beacon Center of Tennessee), the 30th

episode of Free Lunch discusses how Adam has been barred by the Tennessee Alarm Systems Contractors Board from distributing the software he developed to identify potentially dangerous individuals and prompt a security response before violence occurs. This episode of Free Lunch will be released as a podcast tomorrow, May 8.

[Fourth Branch] Innovation in the US Patent System

How does the US patent system affect inventors and innovators? Does the patent system promote or stifle innovation? **Josh Malone**, inventor of Bunch O Balloons, and a variety of intellectual property experts weigh in on this important topic.

[Free Lunch] Arizona Dumps Deference: The Beginning of the End for Chevron?

Featuring **Prof. Philip Hamburger** (Columbia Law School) and **Jonathan Riches** (Goldwater Institute), the 29th episode of Free Lunch discusses Arizona's recent passage of legislation eliminating Chevron deference in Arizona state courts, how this new law might change state agency rulemaking and

enforcement, and whether this law can serve as a model for the rest of the country, and the federal government.

[Free Lunch] Analyzing how EPA is Addressing "Secret Science"

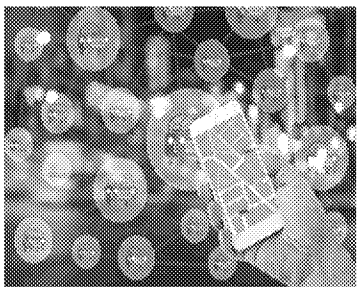
Featuring Daren Bakst (The Heritage Foundation) and Richard B. Belzer Ph.D., the 28th episode of Free Lunch discusses EPA Administrator Scott Pruitt's recent announcement on "secret science" and "how transparency in government can be strengthened and better inform policymaking."

What's Coming Up?

[Paper] The FDA's Approach to Off-Label Communications: Restricting Free Speech in Medicine?

The FDA currently bars any speech by the manufacturer of a drug describing or promoting a use of the drug for any use other than an on-label use – even if the information is entirely truthful and non-misleading and will help physicians better treat their patients. Is such a restriction

compatible with the First Amendment? How can the FDA modernize and clarify its position on off-label communications? This paper, to be released on Thursday, May 10, will delve into these important questions.



[Event] Emerging Technology in Transportation

Start: Friday, May 18, 2018, 12:00 PM ET
End: Friday, May 18, 2018, 1:30 PM ET

Location:
Capitol Hill Club
300 First St, SE
Washington, DC 20003

On Friday, May 18, join **Ryan Hagemann** (Niskanen Center), **Christopher Koopman** (Center for Growth and Opportunity), **Gregory S. McNeal** (Pepperdine University), and **Brent Skorup** (Mercatus Center) for a discussion on drone delivery, autonomous vehicles, flight sharing, and more.

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Message

From: Dolley Madison [fedsoc@fed-soc.ccsend.com]
on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 5/3/2018 4:53:52 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Starting Now: Deference Doctrines and The Clean Water Act

The Federalist Society

May 3, 2018

Our Call is Beginning NOW

Dial 888-752-3232 to Participate

Deference Doctrines and the Clean Water Act

Environmental Law & Property Rights Practice Group, Administrative Law & Regulation Practice Group, Article I Initiative and Regulatory Transparency Project Teleforum

Thursday, May 3, 2018 | 1:00 p.m. ET

Prof. Jonathan H. Adler
Johan Verheij Memorial
Professor of Law
Director of the Center for Business
Law & Regulation
Case Western Reserve University
School of Law

Timothy Bishop
Partner
Mayer Brown LLP

Recently, Justices of the Supreme Court have called the Court's deference jurisprudence into significant question. Then Judge Gorsuch, separately concurring in his own panel decision for the Tenth Circuit in *Gutierrez-Brizuela v. Lynch*, questioned the wisdom of *Chevron* deference, cataloguing multiple concerns with the doctrine. Justice Thomas has repeatedly called for the Court to reconsider its deference to agency interpretations of their own regulations under *Auer v. Robbins*. And a petition for writ of certiorari has been pending for well over a year in *DuPont v. Smiley*, which questions the continuing viability of *Skidmore* deference. Reconsideration of these doctrines could have a substantial effect on Clean Water Act jurisprudence. EPA and the Army Corps of Engineers have adopted extensive regulations interpreting the Act's many technical provisions. Each agency has then published a wide variety of guidance documents, such as the Army Corps' library of Regulatory Guidance Letters and Regional Supplements to the 1987 Wetland Delineation Manual, and EPA's 2008 Post-*Rapanos* Guidance.

This Teleforum will provide an overview of current thinking about deference doctrines on the Supreme Court, the role of deference in the enforcement of the Clean Water Act, and the implications of abandoning judicial deference to agencies for the implementation of the Act.

Dial 888-752-3232 to Participate

Speaker Biographies

Prof. Jonathan H. Adler

Jonathan H. Adler is the inaugural Johan Verheij Memorial Professor of Law and Director of the Center for Business Law & Regulation at the Case Western Reserve University School of Law, where he teaches courses in environmental, administrative and constitutional law.

Professor Adler is the author or editor of seven books, including *Business and the Roberts Court* (Oxford University Press, 2016) and *Rebuilding the Ark: New Perspectives on Endangered Species Act Reform* (AEI Press, 2011), and over a dozen book chapters. His articles have appeared in publications ranging from the *Harvard Environmental Law Review* and *Supreme Court Economic Review* to *The Wall Street Journal* and *USA Today*. He has testified before Congress a dozen times, and his work has been cited in the U.S. Supreme Court. A 2016 study identified Professor Adler as the most-cited legal academic in administrative and environmental law under age 50.

Professor Adler is a contributing editor to *National Review Online* and a regular contributor to the popular legal blog, *The Volokh Conspiracy*. A regular commentator on constitutional and regulatory issues, he has appeared on numerous radio and television programs, ranging from the PBS "Newshour with Jim Lehrer" and NPR's "Talk of the Nation" to the Fox News Channel's "O'Reilly Factor" and "Entertainment Tonight."

Professor Adler is a senior fellow at the Property & Environment Research Center in Bozeman, Montana and at the Center for the Study of the Administrative State at the George Mason University School of Law. He also serves on the academic advisory board of the Cato Supreme Court Review, the NFIB Small Business Legal Center Advisory Board, the Board of Directors of the Foundation for Research on Economics and the Environment, and the Environmental Law Institute's Environmental Law Reporter and ELI Press Advisory Board.

In 2004, Professor Adler received the Paul M. Bator Award, given annually by the Federalist Society for Law and Policy Studies to an academic under 40 for excellence in teaching, scholarship, and commitment to students. In 2007, the Case Western Reserve University Law Alumni Association awarded Adler their annual "Distinguished Teacher Award."

Prior to joining the faculty at Case Western Reserve, Professor Adler clerked for the Honorable David B. Sentelle on the U.S. Court of Appeals for the District of Columbia Circuit. From 1991 to 2000, Adler worked at the Competitive Enterprise Institute, a free market research and advocacy group in Washington, D.C., where he directed CEI's environmental studies program. He holds a BA magna cum laude from Yale University and a JD summa cum laude from the George Mason University School of Law.

Timothy Bishop

An experienced appellate lawyer, Tim Bishop has argued five cases and briefed more than 60 before the US Supreme Court and has successfully handled dozens of appeals in federal and state appellate courts. He also represents clients in dispositive dismissal, summary judgment, and class certification motions in federal and state trial courts. Mr. Bishop is co-author of the leading treatise, *Supreme Court Practice* (9th ed. 2007), a contributor to *Federal Appellate Practice* (2008), and a prolific author and speaker in the areas of appellate practice, environmental law, and securities law.

Mr. Bishop has substantial experience in environmental and land use litigation (especially under the Clean Water Act, Endangered Species Act, Clean Air Act, federal and state Takings Clauses, and nuisance law), securities and antitrust litigation, class certification, federal and state tax controversies, labor and employment law, and constitutional appeals and litigation. In the securities area, he has submitted successful party or amicus briefs in most of the Supreme Court's recent cases, including *Dabit*, *Dura*, *Tellabs*, *Billing*, *Stoneridge*, and *Amchem*, as well as in leading lower-court cases such as *In re IPO Securities Litigation* and *Newton*. He has broad experience in defeating class certification in complex litigation.

In the environmental law area Mr. Bishop has been ranked as a top practitioner by *Chambers*, *Best Lawyers in America*, *Euromoney's Best of the Best USA*, and other publications, which have called him "the go-to guy if you have a serious environmental issue on appeal - he is excellent at spotting issues and is a great appellate advocate" (*Chambers* 2009). He is ranked Band 1 in *Chambers USA 2012* in Environmental Law ("sources unanimously consider Bishop to be an exceptionally strong appellate lawyer") and *Legal 500 2012* comments, "Bishop is 'superb and provides exemplary service.'" He successfully argued *Solid Waste Agency of Northern Cook County* in the Supreme Court, in

which the Court struck down the Corps of Engineer's "migratory bird rule." One leading environmental law professor and practitioner has written that Mr. Bishop is "industry's leading Supreme Court lawyer in environmental cases."

Since 1995, Mr. Bishop has been a partner in Mayer Brown LLP's 60-strong Supreme Court and Appellate Litigation Practice (which "stands head and shoulders above its competitors," according to *Chambers USA 2008*). Previously, he served as Law Clerk to U.S. Supreme Court Justice William J. Brennan, Jr., and to Judge James L. Oakes, U.S. Court of Appeals for the Second Circuit, and was Staff Counsel and Skadden Fellow with the American Civil Liberties Union. Recently, he was named one of *Benchmark's 2013* Appellate Illinois Litigation Stars. *Chambers USA* (2007) notes his "high visibility" and "incredible reputation for appellate law," and he has been described in the *Lawdragon 500* as "a high court superstar" and a "top advocate" (2006).

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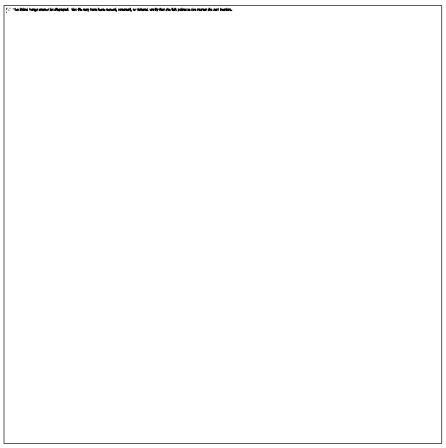
China's thirst for energy trumps Trump's trade war...

Washington Examiner (8/9/18) reports: "China abruptly changed course Wednesday and removed oil from a list of American products it is subjecting to tariffs, as the energy-hungry country acknowledged the limits on trade war losses it can absorb. Beijing announced on Wednesday that it would impose retaliatory 25 percent tariffs on $16 billion worth of U.S. imports, a response to the Trump administration after it issued similar tariffs against China on Tuesday...China is the largest U.S. market for crude exports. Experts say China spared U.S. oil because it may struggle to get it elsewhere due to disruptions from other major suppliers."



"Cars are sold in a national market and between travel and people relocating, cars move between states millions of times a year. It is not feasible for individual states to have separate standards for cars. Constitutionally, this is a clear matter of interstate commerce."

– Kenny Stein, *Institute for Energy Research*

Breaking news: People are more likely to believe the globe is warming on hot days.

Bloomberg (8/9/18) opinion: "Yes, Californians do have more cause to think that it's getting warmer than West Virginians do. But Wyomans appear to have

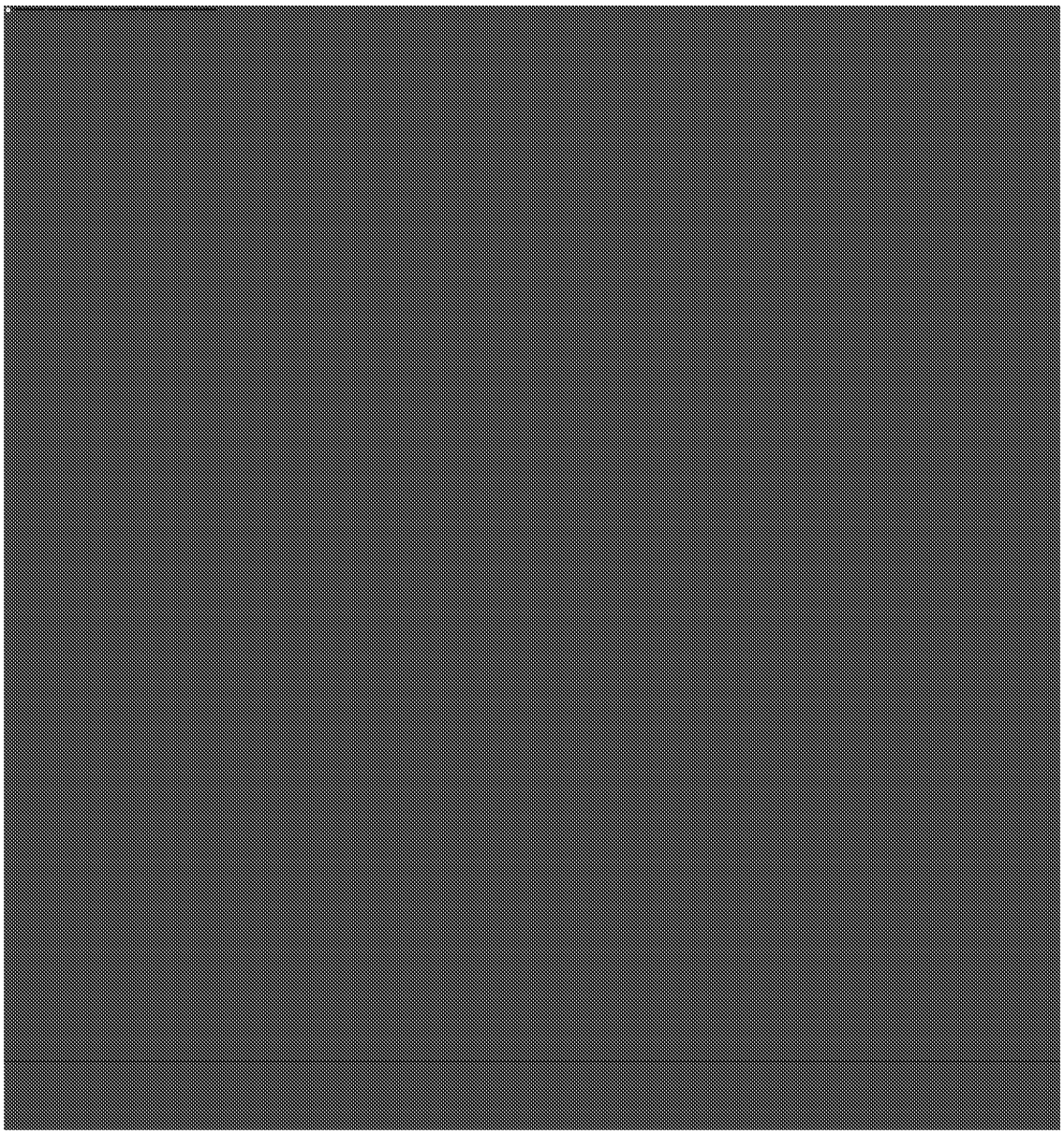
more cause to believe that it's getting warmer than New Yorkers do. Actual climate seems to play a smaller role in determining climate beliefs than political, cultural and economic factors...Three Columbia University scholars did find in 2011 that people were more likely to believe in global warming if the temperature was warmer than usual on the day of the study."

Sacrificing grandma on the altar of "fossil fuel divestment"

Hot Air (8/9/18) reports: "I've mostly lost track of how many times we've seen liberal activists pushing for fossil fuel divestment. In virtually every instance, the bean counters in charge of these funds have kicked them to the curb because such a move would be economic suicide. That hasn't slowed the roll of the activists, however... [In new proposals] New York would expect to lose between $136 million for narrow divestment to $198 million under broad divestment *every year they stuck with the policy*. Colorado's smaller pension fund would take a more modest loss of between $36 million and $50 million per year. Does it sound like either of these pension systems can absorb that much red ink?"

Jiminy Cricket! There are some Harrisburg politicians whose noses appear to be growing.

Clear Energy Alliance (8/3/18) video: "It is true that Pennsylvania is the only major producing state that doesn't have a severance tax. But making that claim is highly misleading because Pennsylvania is also the only state that imposes an 'Impact Fee.' And that impact has been big. $1.4 billion has been generated since 2011. Funds have been spent on such things as public infrastructure like storm and sewer systems, social services, information technology, public safety and environmental programs. Harrisburg politicians complaining about the state not having a severance tax on unconventional shale gas production when they are fully aware there is an Impact Fee are trying to deliberately deceive the public. For that, we give them 3 out of 5 Pinocchios."



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Tom Pyle, American Energy Alliance

Myron Ebell, Competitive Enterprise Institute

Phil Kerpen, American Commitment

William O'Keefe, George C. Marshall Institute

Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity

Joe Bast, Heartland Institute

David Ridenour, National Center for Public Policy Research

Michael Needham, Heritage Action for America

Grover Norquist, Americans for Tax Reform

Sabrina Schaeffer, Independent Women's Forum

George Landrith, Frontiers of Freedom

Thomas A. Schatz, Citizens Against Government Waste

Richard Manning, Americans for Limited Government

Adam Brandon, FreedomWorks

Rich Collins, Positive Growth Alliance

Craig Richardson, E&E Legal

The Honorable George Allen, American Energy Freedom Center

Dick Patten, American Business Defense Council

Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute

Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↓ $66.74
Natural Gas: ↓ $2.95
Gasoline: $2.86
Diesel: $3.15
Heating Oil: ↑ $211.56
Brent Crude Oil: ↓ $66.74
US Rig Count: ↓ 1142

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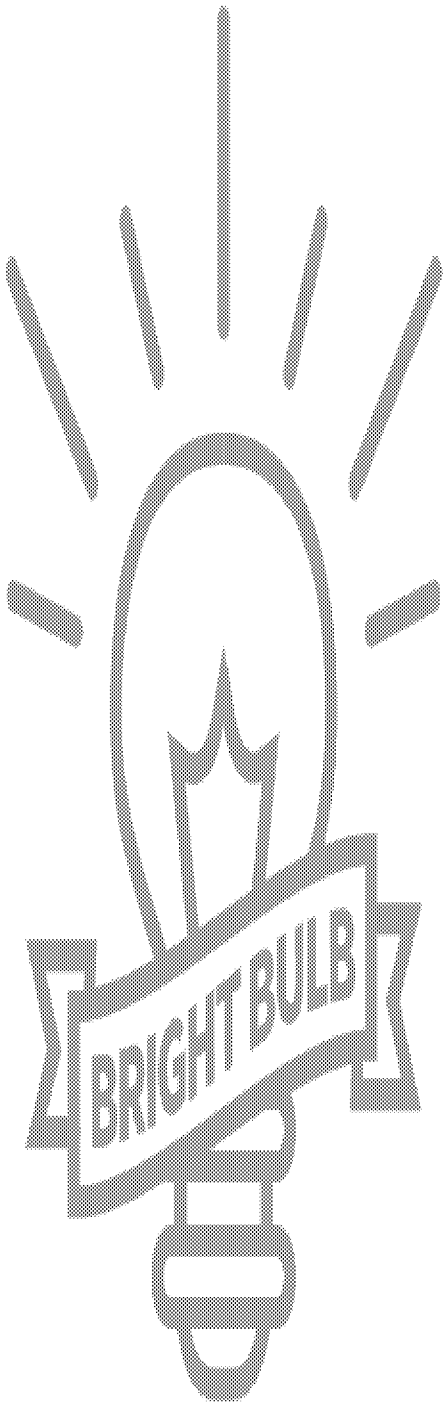
E&E News (11/1/18) reports: "Health care and President Trump are two defining issues in the toss-up Nevada Senate race, which could determine whether the GOP retains control of the chamber. But for environmental and energy interests, there's another reason to watch the race closely: electric vehicles. The two candidates — Republican incumbent Dean Heller and Democratic challenger Rep. Jacky Rosen — have introduced competing legislation to extend the popular EV tax credit. Heller earlier this month introduced a bill that would extend the tax credit until 2022...Thomas Pyle, president of the American Energy Alliance, criticized Heller for being responsive to the 'niche' interests of Tesla...'Elon Musk recently said he thinks he can manage without it,' Pyle said. 'So which is it? Can he or can't he? And if he can, why is Dean Heller seeking to extend it?' Pyle also argued that the tax credit mostly benefits wealthy households. Data from the Energy Information Administration show that 42 percent of households owning electric vehicles

have an annual income of more than $150,000. 'We certainly don't want to see the federal government be spending billions more to subsidize wealthy people.'"



"Our frustration, from the Navajo Nation's perspective, is the devastation that [Prop 127] would mean, socially and economically, for those in Arizona and to the Navajo Nation specifically. Our Navajo Nation economy is largely based on our natural resources that bless our lands. These resources provide essential government functions for our people and represents thousands of high-paying Navajo Nation jobs."

– Carlyle Begay, Navajo Nation

Let's not forsake these folks.

GM throws consumers, taxpayers, and its competitors under the electric bus. Sad.

E&E News (10/31/18) reports: "General Motors Co. was hoping for a positive reaction when it made an eye-popping announcement last week about boosting electric vehicles. Instead, America's largest automaker was flooded with criticism. Environmentalists blasted the announcement as a 'distraction' meant to burnish the company's green image, while an industry source called it a 'thumb in the eye to President Trump.' Perhaps more importantly, GM's announcement blindsided its allies in the auto industry, a source familiar with their reactions told E&E News...Tom Pyle, president of the American Energy Alliance, said his group opposes GM's proposal because it amounts to a government handout for EVs...'GM's proposal is a tacit admission that they can't sell electric vehicles without government subsidies and mandates,' Pyle said. 'Politically, it is a thumb in the eye to President Trump, who is was doing exactly what the [automakers] wanted him to do when he reopened the unworkable Obama rule.'"

Just give the decision-making power to the Supreme Soviet already...

Reason (11/1/18) column: "On November 6, Washington State residents will have a chance to vote on a new Carbon Emissions Fee and Revenue Allocation Initiative, known as Initiative 1631. Under this initiative, the state would impose a 'fee' on each ton of carbon dioxide emitted starting at $15 per ton in 2020, and rising each year by $2 until 2035, when it would reach $45 per ton. However, the initiative exempts major local industries with big export markets from the fee, including aircraft maker Boeing and aluminum smelter Alcoa, along with the Centralia coal-fired electric power plant, which is set to shut down in 2025. In would, however, apply to the state's five petroleum refineries. Unlike the earlier proposal, this new initiative has the backing of most environmental lobbying groups. What's different? Instead of going back into the pocketbooks of citizens, this time the funds will be directed toward projects chosen by a new 15-member board of political appointees, over which environmental activist groups will exercise outsized influence."

Consider the script flipped.

Daily Caller (10/31/18) reports: "Supporters of carbon pricing argue it's a

market-oriented approach to reducing greenhouse emissions — and more efficient than simply piling the generation industry with more environmental regulations. Americans for Carbon Dividends...argues such a plan would be revenue neutral, allowing consumers to collect tax revenue made from carbon polluters.However, a study commissioned by the Institute for Energy Research (IER) finds that many of these outcomes would not necessarily come to fruition. Among the study's key findings: The majority of carbon tax scenarios would actually lower the country's growth domestic product (GDP); it would not produce high amounts of tax revenue, with a carbon fee likely to generate a net revenue of only 32 cents on the dollar; the reduced GDP would greatly impact state budgets, where state and local governments would see around $18.9B to $30.6B in lost revenue in the first decade of a carbon tax implementation."

Ay, Dios mio.

The Guardian (10/30/18) reports: "Thousands of Central American migrants trudging through Mexico towards the US have regularly been described as either fleeing gang violence or extreme poverty. But another crucial driving factor behind the migrant caravan has been harder to grasp: climate change. Most members of the migrant caravans come from Guatemala, Honduras and El Salvador – three countries devastated by violence, organised crime and

systemic corruption, the roots of which can be traced back to the region's cold war conflicts. Experts say that alongside those factors, climate change in the region is exacerbating – and sometimes causing – a miasma of other problems including crop failures and poverty."

Don't act like you're not impressed.

Energy In-Depth (11/1/18) reports: "The Energy Information Administration (EIA) released data today that show monthly U.S. crude oil production surpassed 11 million barrels per day (p/d) for the first time time ever in August. This volume of production is more than double the level of crude oil produced by the U.S. in 2008 and confirms earlier predictions from the EIA that the U.S. would overtake Russia to become the world's top crude producer this year."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance

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Phil Kerpen, American Commitment

William O'Keefe, George C. Marshall Institute

Andrew Quinlan, Center for Freedom and Prosperity

Joe Bast, Heartland Institute

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The Honorable George Allen, American Energy Freedom Center

Dick Patten, American Business Defense Council

Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute

Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↓ $63.59

Natural Gas: ↓ $3.18

Gasoline: ↓ $2.78

Diesel: $3.28

Heating Oil: ↓ $218.97

Brent Crude Oil: ↑ $73.04

US Rig Count: ↓1147

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The Federalist Society

May 11, 2018

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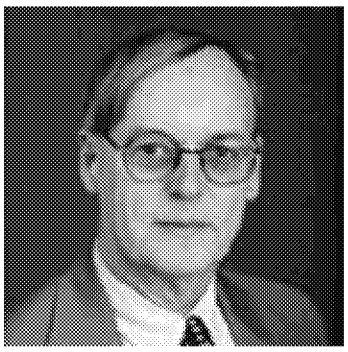
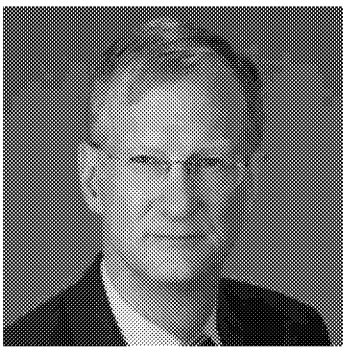
In Memoriam: Ron Rotunda

Professional Responsibilities & Legal Education Practice Group Teleforum

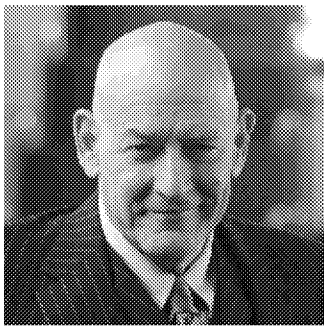
Friday, May 11, 2018 | 12:00 noon ET



Prof. James W. Ely, Jr.
Milton R. Underwood Professor of Law Emeritus
Vanderbilt University Law School



John J. Park, Jr.
Of Counsel
Strickland Brockington Lewis LLP



Prof. Stephen B. Presser
Raoul Berger Professor of Legal History
Northwestern University School of Law

In this Teleforum, Prof. Ely of Vanderbilt Law, Prof. Presser of Northwestern, and our Professional Responsibilities Practice Group Chair Jack Park will join us to discuss Prof. Rotunda's newest book, *John Marshall and the Cases that United the States of America*. Professor Ronald Rotunda is well known in the Federalist Society community. He passed away unexpectedly March 14, 2018. He was also an active member of the Federalist Society leadership, serving on the Executive Committee of the Professional Responsibilities Practice Group for over a decade and participating in the National Lawyers Convention, CLE Teleforum calls, and podcasts.

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Speaker Biographies

Prof. James W. Ely, Jr.

James Ely is a renowned legal historian and property rights expert whose career accomplishments were recognized with both the Brigham-Kanner Property Rights Prize and the Owner Counsel of American Crystal Eagle Award in 2006. He is the author of several books that have received widespread critical acclaim from legal scholars and historians, including *The Guardian of Every Other Right: A Constitutional History of Property Rights*, *The Fuller Court: Justices, Rulings and Legacy* in which he examines the work of the Supreme Court between 1888 and 1910, and *Railroads and American Law* in which he systematically explores the way that the rise of the railroads shaped American legal culture. He also served as an editor of both the second edition of the *Oxford Companion to the Supreme Court*, and the second edition of the *Oxford Guide to Supreme Court Decisions*. Professor Ely received the Tennessee History Book Award in 2002 for A History of the Tennessee Supreme Court. Between 1987 and 1999, he served as an associate editor of the American Journal of Legal History. Since Professor Ely joined the Vanderbilt faculty in 1972, he has been frequently recognized by students as one of the law school's outstanding teachers. He is currently working on a book dealing with the history of the contract clause of the Constitution.

Prof. Stephen B. Presser

Stephen Presser is a leading American legal historian and expert on shareholder liability for corporate debts. He is frequently an invited witness before committees of the U.S. Senate and House of Representatives on issues of constitutional law. He holds a joint appointment with the J. L. Kellogg Graduate School of Management and also teaches in Northwestern's history department.

John J. Park, Jr.

John J. Park, Jr. is of counsel with Strickland Brockington Lewis LLP (SBL). He serves as outside counsel for Pro-English, which advocates for the use of the English language in official governmental business. He previously served as outside counsel for the Coca-Cola Bottlers' Association, the organization of independent bottlers and distributors of Coca-Cola and other products. He has also been designated a Deputy Attorney General for the State of Alabama and

has been assisting the Alabama Attorney General's Office with the legal work including litigation associated with the process of redistricting that follows the 2010 Census.

Before joining SBL, Mr. Park was a Visiting Legal Fellow in the Center for Legal and Judicial Studies at the Heritage Foundation from October 2009 through October 2010. As a Visiting Legal Fellow, Mr. Park participated in the Center's Supreme Court program and worked on the Center's overcriminalization, civil justice, and civil rights projects.

While in the Washington, DC area, from August 2007 to June 2009, Mr. Park served as Special Assistant to the Inspector General for the Corporation for National and Community Service, the umbrella organization for the AmeriCorps, Senior Corps, and Learn and Serve America programs. The Inspector General's Office conducts independent and objective audits and investigations to make sure that the Corporation and the grantees that receive Corporation funds use them in compliance with the applicable federal laws, regulations, and grant conditions.

From 1995 to 2007, Mr. Park served as a Deputy Attorney General and Assistant Attorney General for the State of Alabama. He started working in the Criminal Appeals Division, where he represented the State in non-capital criminal appeals before the Alabama Court of Criminal Appeals and the Alabama Supreme Court and in habeas corpus proceedings in federal court. In January 1998, Mr. Park assumed responsibility for representing the State, its agencies, and employees in redistricting, voting rights and election law, employment litigation, institutional reform litigation, and construction cases in state and federal courts both at trial and on appeal.

Mr. Park served in the U.S. Army JAG Corps both on active duty and in the Reserve. While on active duty, he represented the United States in appeals from court-martial convictions in what are now the Court of Appeals for the Armed Forces and the Army Court of Criminal Appeals. Mr. Park wrote more than 250 briefs and argued 25 cases in those courts. As a member of the Army Reserve, he provided instruction in criminal trial advocacy at the Army JAG School.

Mr. Park graduated from the University of Virginia with a B.A. in History and received his J.D. from Yale Law School in 1980. He is a member of the Georgia, Virginia, and Alabama state bars.

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The Federalist Society

June 25, 2018

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Courthouse Steps: Gerrymandering in the Supreme Court: *Gill v. Whitford*, *Benisek v. Lamone* and *Abbott v. Perez*

Free Speech & Election Law Practice Group

Monday, June 25, 2018 | 4:00 p.m. ET

Hans A. von Spakovsky
Manager
Election Law Reform Initiative and
Senior Legal Fellow
The Heritage Foundation

The U.S. Supreme Court's docket included three cases this term on the legal limits of redistricting. All three cases have now been disposed of by the Court. Our expert will analyze the three cases together, and discuss the future of redistricting in the states, and at the Court.

Dial 888-752-3232 to Participate

Speaker Biographies

Hans A. von Spakovsky

Hans von Spakovsky is an authority on a wide range of issues - including civil rights, civil justice, the First Amendment, immigration, the rule of law and government reform -- as a senior legal fellow in The Heritage Foundation's Edwin Meese III Center for Legal and Judicial Studies.

As manager of the think tank's Election Law Reform Initiative, von Spakovsky also studies and writes about campaign finance restrictions, voter fraud and voter ID, enforcement of federal voting rights laws, administration of elections and voting equipment standards.

Heritage's election reform project examines not only how to protect the integrity of campaigns and elections but to achieve greater fairness and security. "In an era of razor-thin election margins, these issues are vital to the preservation of our republican form of government and the rule of law," von Spakovsky says. Previously, as manager of the think tank's Civil Justice Reform Initiative, von Spakovsky studied how plaintiffs' attorneys and activists attempt to manipulate the courts for their own ends -- at the expense of the public.

He is the co-author with John Fund of the book "Who's Counting?: How Fraudsters and Bureaucrats Put Your Vote at Risk" (Encounter Books, 2012) and "Obama's Enforcer: Eric Holder's Justice Department" (HarperCollins/Broadside June 2014).

Before joining Heritage in 2008, von Spakovsky served two years as a member of the Federal Election Commission, the authority charged with enforcing campaign finance laws for congressional and presidential elections, including public funding.

Previously, von Spakovsky worked at the Justice Department as counsel to the assistant attorney general for civil rights, providing expertise in enforcing the Voting Rights Act and the Help America Vote Act of 2002.

A former litigator, in-house counsel and senior corporate officer in the insurance industry, von Spakovsky worked on tort reform and civil justice issues there for more than a decade.

He has served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections. He is a former vice chairman of the Fairfax County (Va.) Electoral Board and a former member of the Virginia Advisory Board to the U.S. Commission on Civil Rights. He currently serves on the Policy Board of the American Civil Rights Union.

His analysis and commentary have appeared in *The Wall Street Journal*, *The Washington Times*, *Politico* and *Human Events*, as well as such outlets as National Review Online and Townhall. His series for PJ Media, "Every Single One," was nominated for a Pulitzer Prize. He appears regularly on Fox News Channel and on other national and regional TV and radio news outlets.

He has testified before state and congressional committees and made presentations to, among other organizations, the National Association of Secretaries of State, the Federalist Society, the National Conference of State

Legislatures and the American Legislative Exchange Council. He also has taught as an adjunct professor at the George Mason University School of Law.

A 1984 graduate of Vanderbilt University School of Law, von Spakovsky received a bachelor's degree in 1981 from the Massachusetts Institute of Technology. He currently resides in Vienna, Va.

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A Teleforum Sponsored by the Regulatory Transparency Project
Tuesday, April 24, 2018 | 12:00 p.m. ET

Daren Bakst
Senior Research Fellow
Agricultural Policy
The Heritage Foundation

Richard Belzer
Independent Consultant
Regulation, Risk, Economics &
Information Quality

EPA Administrator Scott Pruitt announced that his agency would no longer allow the use of "secret science" in developing federal regulations. Specifically, the agency will only use scientific studies to develop regulations when the data and methodology for those studies are made accessible to the public. Is there really a secret science or transparency problem that even needs to be addressed? If so, have there been attempts historically to correct the problem? What are the implications of excluding such studies? This presentation will provide background on this effort and discuss how transparency in government can be strengthened and better inform policymaking.

Featuring:

- **Daren Bakst**, Senior Research Fellow, Agricultural Policy, The Heritage Foundation
- **Richard Belzer**, Independent Consultant, Regulation, Risk, Economics & Information Quality

- ***Moderator:*** **Devon Westhill**, Director, Regulatory Transparency Project

To listen to this Regulatory Transparency Project Teleforum, please dial 888-752-3232 at 12:00 p.m.

To learn more about the Regulatory Transparency Project, visit **RegProject.org**.

Dial 888-752-3232 to Listen In

Speaker Biographies

Daren Bakst

Daren Bakst studies and writes about agriculture subsidies, property rights, environmental policy, food labeling and related issues as The Heritage Foundation's research fellow in agricultural policy.

Mr. Bakst, who joined Heritage's Roe Institute for Economic Policy Studies in May 2013, previously was a policy counsel for the U.S. Chamber of Commerce, where he focused on regulatory reform as well as food and agricultural policy.
He worked for seven years at the Raleigh, N.C.-based John Locke Foundation, one of the largest state-based, free-market think tanks. As director of legal and regulatory studies there, he concentrated on property rights and environmental policy.

Mr. Bakst has appeared in or been quoted by media outlets such as The Wall Street Journal, USA Today, The Washington Times, CNN and National Review Online.

He serves on the Federalist Society's Environmental Law & Property Rights and Administrative Law & Regulation Executive Committees and was previously a member of the Energy, Environment and Agriculture Task Force of the American Legislative Exchange Council.

Mr. Bakst, who hails from West Palm Beach, Fla., received his bachelor's and master's degrees from George Washington University. A licensed attorney, he holds a law degree from University of Miami and a master of laws degree from American University.

Richard Belzer

Since 2001, Dr. Richard Belzer has been an independent consultant in regulation, risk, economics and information quality. Previously he was a visiting professor of public policy at Washington University in St. Louis and economist in the Office of Information and Regulatory Affairs in the Office of Management and Budget. He

received his Ph.D. in public policy from Harvard University (1989), Master's in Public Policy (MPP) from the John F. Kennedy School of Government (now Harvard Kennedy School) (1982), and MS and BS degrees in agricultural economics from the University of California at Davis (1979, 1980). He is a regular contributor to scholarly professions through journal peer review and service to professional societies. He was elected Treasurer of the Society for Risk Analysis (1998, 2000) elected Secretary-Treasurer of the Society for Benefit-Cost Analysis (2008, 2010, 2012). He earned multiple awards for exemplary performance at OMB, the SRA's Distinguished Service Award (2003), and the SBCA's Richard O. Zerbe, Jr. Distinguished Service Award (2017). In 1995, he was named a Fellow of the Cecil and Ida Green Center for the Study of Science and Society. In 2017, Dr. Belzer completed a 2-year term as a member of the USEPA Science Advisory Board Panel on Economy-wide Modeling. He serves as a member of the RTP Energy and Environment Working Group.

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on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 7/6/2018 12:53:35 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Full steam ahead

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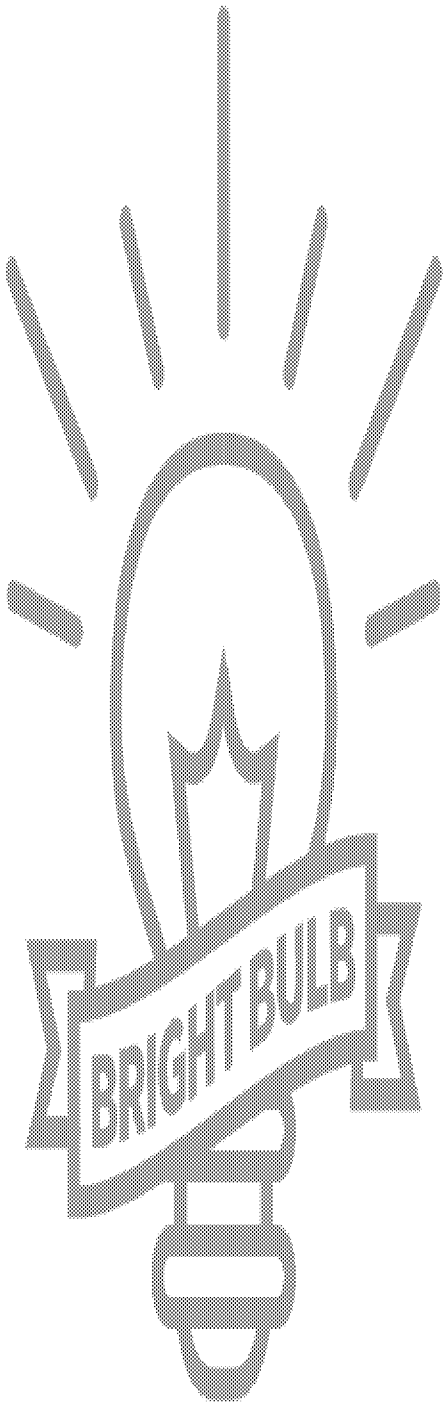
Looking ahead

The Hill (7/5/18) reports: "The incoming head of the Environmental Protection Agency (EPA) told staff he's 'humbled and honored' to be taking charge of the agency after embattled Administrator Scott Pruitt resigned. Andrew Wheeler, the EPA's deputy administrator since April, will become acting administrator starting Monday after Pruitt leaves Friday. In a brief email to the agency's employees late Thursday after Trump announced Pruitt's departure, Wheeler thanked Pruitt 'for his service and leadership. I am both humbled and honored to take on this new responsibility at the same agency where I started my career over 25 years ago,' Wheeler wrote in the email obtained by The Hill."

ONWARD!

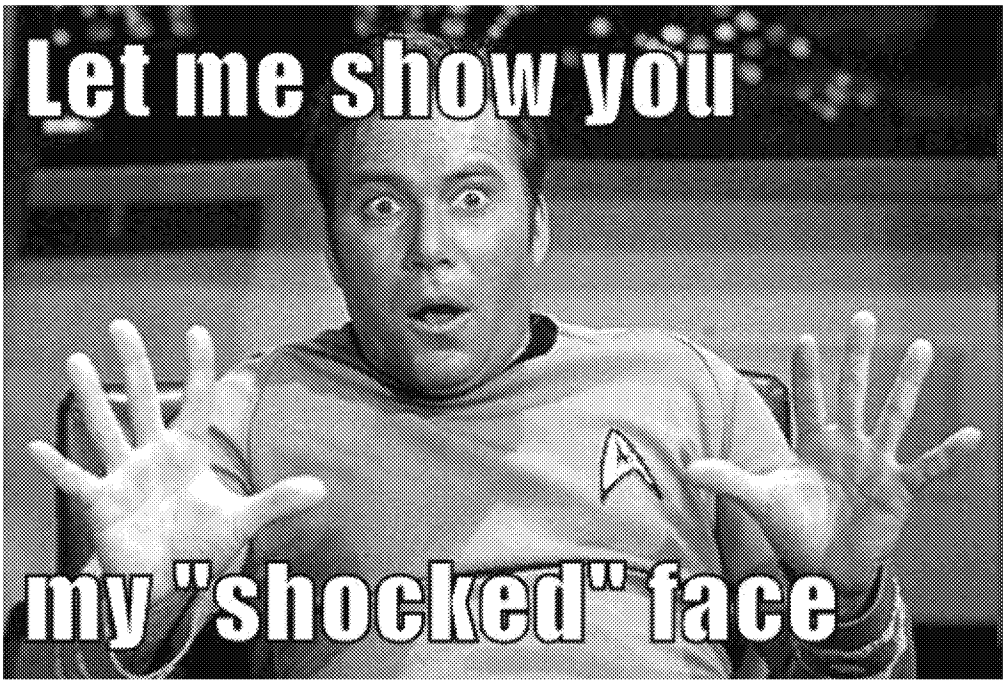


"In the short time Administrator Pruitt was at the EPA, he accomplished much to reorient the Agency towards environmental improvement and away from an obsessive focus on global warming. The work he started on transparency, on the Clean Power Plan, on Waters of the United States, on State authority, on the federal fuel mandate, on the ethanol mandate, and on a host of other issues will ensure that the Agency remains focused on improving the environment rather than inhibiting consumer choice or compromising prosperity."

– Thomas Pyle, *AEA President*

No shocker there

The Daily Caller (7/6/18) reports: "China's much vaunted plan to fight global warming with a cap-and-trade system doesn't seem to be living up to the hype. China announced its plan for a carbon dioxide emissions trading market in December 2017 as part of its commitment to the Paris Agreement, but the government released almost no details about the plan... Europe's cap-and-trade program failed to make much of a dent in emissions trajectories because officials issued too many permits, which drove prices down. China seems to be moving forward with similar policies."



Not all forms of energy are created equal

Inside Sources (7/5/18) reports: "In Oklahoma, energy subsidies are again under debate at the state capitol, where the state's Corporation Commission has spent several days weighing a proposed wind energy project that could, in theory, bring billions of dollars of investment to the state, but also risks costing the state millions in subsidy money. The Wind Catcher Energy Connection project would bring 2,000 megawatts of new wind energy to customers in

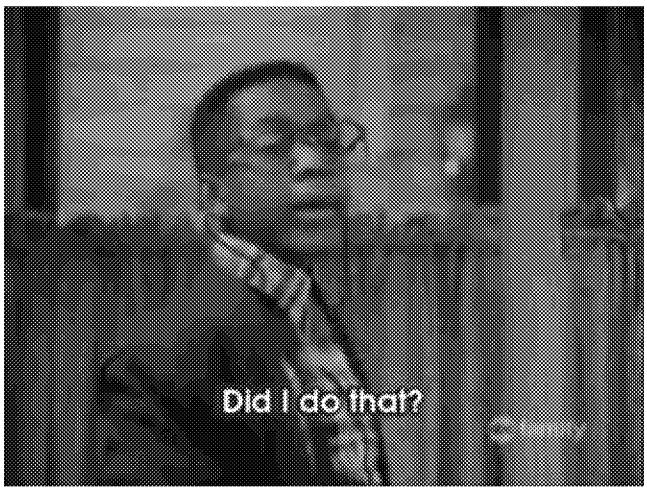
Oklahoma, Arkansas, Louisiana and Texas. The power would also come with a hefty, $4.5 billion price tag. Energy is important business in Oklahoma, where fees and taxes on the oil and gas industries provide much of the state's revenues. Ironically, given Oklahoma's state finances, fossil fuels could quite literally end up paying for green energy."

Another day, another scare tactic

Washington Examiner (7/5/18) reports: "President Trump's push to save coal-fired power plants would put miners back to work, but it would also cause more premature deaths that could cancel out those benefits, according to a new study by environmental economists. Resources for the Future issued the study Thursday focused on the effects of the Trump administration's proposal on emissions, mortality from those emissions, and coal mine jobs. 'Our simulation results indicate that, each year, one American would die from air pollution for every 2 to 4.5 coal mining jobs supported by the policy,' according to the authors of the study, Daniel Shawhan and Paul Picciano."

Whoops

Korea Times (7/6/18) reports: "Solar power plants installed on mountains are causing landslides. Experts say that the government should slow down transition to renewable energies since they also are showing side effects such as environmental problems on top of inefficiency. The Ministry of Trade, Industry and Energy announced Thursday that it will inspect solar power plants installed on mountains around the country, jointly with the Korea Forest Service. It will also ask 28,688 solar panel operators to inspect their facilities and report any irregularities."



If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance

Myron Ebell, Americans for Competitive Enterprise, Competitive Enterprise Institute

Phil Kerpen, American Commitment

William O'Keefe, George C. Marshall Institute

Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity

Joe Bast, Heartland Institute

David Ridenour, National Center for Public Policy Research

Michael Needham, Heritage Action for America

Grover Norquist, Americans for Tax Reform

Sabrina Schaeffer, Independent Women's Forum

George Landrith, Frontiers of Freedom

Thomas A. Schatz, Citizens Against Government Waste

Richard Manning, Americans for Limited Government

Adam Brandon, FreedomWorks

Rich Collins, Positive Growth Alliance

Craig Richardson, E&E Legal

The Honorable George Allen, American Energy Freedom Center

Dick Patten, American Business Defense Council

Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute

Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↓ $72.74

Natural Gas: ↓ $2.84

Gasoline: $2.86

Diesel: $3.41

Heating Oil: ↓ $216.88

Brent Crude Oil: ↓ $76.79

US Rig Count: ↓ 1113

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From: Maisano, Frank [frank.maisano@bracewell.com]
Sent: 6/25/2018 5:39:16 PM
To: Maisano, Frank [frank.maisano@bracewell.com]
Subject: June 25 PRG Energy Update: World Gas, Nominees, Delta CEO@Press Club

Friends,

It has been a great FIFA World Cup so far. Last week, there was some really great games and some big surprises, including Poland out, Argentina on the brink of elimination and Germany barely surviving with a super late goal to sneak past Sweden. More action this week, including Uruguay-Russia today, a huge games in Groups D (Nigeria/Argentina & Croatia/Iceland) tomorrow, an important Brazil-Serbia game on Wednesday and a heavyweight bout on Thursday featuring both undefeated Belgium and England.

This week should be pretty busy as we run up to the July 4th holiday. We may see the RFS RVOs today and there are several key nominees hitting Capitol Hill tomorrow including Daniel Simmons to head DOE's EERE office. The Senate also expects to vote later today on the FY19 energy-water development legislation and there will be an interesting oil/gas hearing at House Energy tomorrow featuring Dan Yergin, Harold Hamm and Sempra's Dennis Arriola.

Energy Secretary Rick Perry is slated to meet tomorrow with Russian Energy Minister Alexander Novak, just days after Russia joined with OPEC to raise oil exports and he also meets with the Israeli Energy Minister today at an event sponsored by the Chamber's U.S.-Israel Business Initiative. He also headlines at the World Gas conference today and Thursday which Is at the Washington Convention Center all week. Other keynoters include Interior Secretary Ryan Zinke, Sens. Bill Cassidy, Lisa Murkowski and Joe Manchin, AGA's Dave McCurdy, Exxon CEO Darren Woods, Dan Yergin, Canada Energy Minister Jim Carr, Cheniere CEO Jack Fusco and our friend Frank Fannon at State. There are a bunch of WGC events, including the Chamber hosting Algeria's Energy Minister tomorrow at 11:00 a.m. See the full schedule here.

My biggest event his week is the Wednesday National Press Club event that features Delta CEO Ed Bastian on Thursday when he discusses the future of airline travel, and many other issues. You should definitely try to attend.

Forgot to mention this last week in the out of town activities, But the Aspen Ideas Forum launched last Thursday. Most of the energy action is this week though when panels look at AVs and hurricane response with FEMA's Brock Long (hosted by our friend Andy Revkin) today; a natural disaster rebuilding panel focused with SoCo's Chris Womack, our friend Jeff Goodell and PR Gov. Rossello and a cybersecurity discussion with Ash carter and SoCo's Tom Fanning; a Wednesday panel on cities and technology with Audi President Scott Keough and the signature conversation event featuring former Sect Of State John Kerry; a Trade conversation with Trade Rep Bob Lighthizer on Thursday and a Friday afternoon panel with former EPA head Lisa Jackson on the Clean Energy revolution. See the full agenda here.

Finally, drawing your attention to two multi-association letters that will be released today urging support for DOE's Daniel Simmons to head EERE and Jeff Clark to be assistant AG in DOJ's Environmental Division. I will forward later today when they are finalized.

I suspect that we won't have an update next week with July 4th, but will urge you to attend the Wednesday July 4th concert on the National Mall. It is one of the special events that you have to attend in your lifetime. We will report though as necessary.

Call with questions and see you at the Press Club on Wednesday for Delta CEO Ed Bastian...Best,

Frank Maisano
(202) 828-5864
c. (202) 997-5932

FRANKLY SPOKEN

"Because of the technological prowess of American manufacturers, U.S. businesses stand to gain from this deal – ratification will open new markets at a time when demand for refrigeration, heating, and air-condition equipment is projected to grow."

A letter from conservative tax group leaders of Americans for Tax Reform, FreedomWorks and the American Council for Capital Formation on moving the Kigali amendment forward in the Senate.

ON THE POD

Bracewell Reloads *Lobby Shop* Podcast – The latest episode of the Bracewell *Lobby Shop* is now live on Stitcher, iTunes, SoundCloud, and Google Play Music. We're debuting a new format this week. We'll cover the latest DC news from three angles: diving into legislation and policy, understanding their context and politics, and the success/failure of the involved parties' communications tactics. Our featured guest interview this week is with PRG's departing intern, Taryn Taylor Brown.

FUN OPINIONS

Regs Take a Hit in SCOTUS – Adam White, research fellow at the Hoover Institution and director of the C. Boyden Gray Center for the Study of the Administrative State at George Mason University's Antonin Scalia Law School, recently wrote in the *Wall Street Journal's* opinion section that regulatory state had a bad Day in court last week. White argued that while Conservatives long have questioned the administrative state, this past week Justices Elena Kagan and Anthony Kennedy each produced an opinion questioning longstanding features of the modern administrative state. Both opinions should encourage further reform and modernization of administrative law. Justice Kagan's majority opinion in *Lucia v. SEC* raised concerns about administrative law judges, while Justice Kennedy joined an 8-1 ruling in *Pereira v. Sessions* but in a lone concurrence, he voiced doubts about " Chevron deference," the 1984 doctrine of judicial deference to agencies' statutory interpretations.

IN THE NEWS

Conservative Tax Groups Urge President to Support HFC Reduction Effort – Last week, 13 Republican Senators urged the White House to send them the Kigali amendment to the Montreal Protocol while 34 HVACR Industry CEOs made the same request. Now, leaders of three conservative tax groups – Americans for Tax Reform, FreedomWorks and the American Council for Capital Formation – are urging the President to submit the Amendment to the Senate for ratification on economic and global competitive grounds. According to a study conducted by JMS Consulting and Inforum, ratifying the Kigali amendment will grow the U.S. share for these products by 25%. Failing to ratify the Kigali amendment will see American market share decline by 14%. The letter adds that "ratifying the Kigali amendment will increase economic output by $12.5 billion, leading to 33,000 more manufacturing jobs over the next decade and 117,000 indirect jobs in manufacturing dependent industries. The amendment also has broad support in the U.S. business and manufacturing community. Finally, the groups detail the risk for US manufacturers if we don't ratify the policy saying the agreement currently has enough support amongst other nations to go into effect on January 1, 2019. However, if the U.S. fails to ratify the agreement, American manufacturers will be restricted in their ability to sell into foreign markets at the cost of jobs and wealth.

ClearPath: Clean Energy Meetings Highlight US, Canada, Japan Alliance – The recent 9th annual Clean Energy Ministerial, a multilateral meeting in Copenhagen of high-level energy officials spanning the globe, launched two significant efforts to better recognize carbon capture and advanced nuclear as clean energy tools. ClearPath's policy triumvirate - Jeremy Harrell, Spencer Nelson and Justin Ong - were there and in a new blog map out why the efforts led by the U.S., Canada, Japan and others shouldn't be overlooked. But despite a good conversation, less than 10 of the 120 events at last month's Nordic Clean Energy Week (of which the ministerial was showcased) were focused on either nuclear or carbon capture. As these technologies will be a significant part of the future of the low-carbon energy mix,

the ClearPath policy trio note there is still much work to do to elevate those issues on the global stage, including at next year's ministerial hosted by Canada.

IRS Sets Beginning of Construction for Tax Credit – In a huge victory for solar developers, the Internal Revue Service (IRS) has established two new tests to guide taxpayers on solar energy property construction requirements for claiming a renewable energy tax incentive. Taxpayers may establish the beginning of construction either by through a "physical work test"—starting physical work of "a significant nature"—or by meeting a safe harbor based on having paid 5% or more of the total cost of the energy property. Solar Energy Industries Association CEO Abigail Ross Hopper said "the IRS has taken an important step forward with this guidance and provided certainty that will help solar project sponsors finance and build more solar. Our members have been working hard to secure financing for projects and keep them on track to meet critical development and construction milestones."

Senate Approves Advanced Nuclear Fuel Spending – The Senate approved an amendment to a FY19 spending bill from Sen. Mike Crapo (R-Idaho) granting $15 million for a demonstration project to ensure domestic supply of high assay low enriched uranium (HA-LEU), which will fuel many advanced nuclear reactors. There is a looming shortage in the domestic supply of HA-LEU, which is commercially produced in countries such as France, Russia and China, but not in the U.S. Former NRC Commissioner Jeffrey Merrifield and Pillsbury Law Firm Senior Associate Anne Leidich laid out 10 recommendations for lawmakers, policymakers and NRC to step up to this supply challenge in a recent white paper sponsored by ClearPath and the U.S. Nuclear Infrastructure Council. A final Senate vote on their broader FY19 energy spending bill is scheduled for today.

DOE Grants $64M for Advanced Nuclear – The Department of Energy will award nearly $64 million in advanced nuclear awards to national labs, industry and 39 U.S. universities in 29 states. The 89 awards are allocated under the Nuclear Energy University Program ($47 million), Nuclear Energy Enabling Technologies program ($5 million) and the Nuclear Science User Facilities program ($6.6 million).

Oil Companies Help to Drive Offshore Wind –As states seek to rapidly escalate offshore wind, our Friend Elizabeth McGowan reports that there has been a ripple effect for logistics companies that are more accustomed to serving the oil and gas industry. Our former Atlantic Wind Connection colleague, now at the University of Delaware, Stephanie McClellan has spent the last four years at guiding offshore wind from pie-in-the-sky blueprints to steel-in-the-water infrastructure that can deliver 8,000 megawatts of power to the Northeast by 2030. McClellan says a linchpin to success has been developing buy-in from businesses 1,500 miles away in the Gulf Coast, where entrepreneurs are reshaping their expertise to meet the siting, construction, installation, and maintenance needs of a nascent, but promising, offshore wind industry. One example of that union is the collaboration of Houston-based Zentech with Renewable Resources International in Virginia. Engineers have designed a marine vessel versatile enough to be used to install wind turbines and also decommission oil and gas rigs. Delivery of the modified ship is scheduled next year.

ON THE SCHEDULE THIS WEEK

World Gas Conference Features Perry, Industry Leaders – The International Gas Union (IGU) hosts the 27th World Gas Conference (WGC 2018) in Washington DC from June this week. The triennial event aims to raise the voice of natural gas while offering timely updates on strategic, commercial and technical issues facing the entire gas value chain and offers the most comprehensive and diverse program to date for the natural gas industry. For the first time ever this includes topics for professionals working in sectors including finance, trading, law, sustainability/renewables, policy/government.

Wehrum, McCabe Speak to Air/Waster Conference – The Air & Waste Management Association holds its annual conference in Hartford, Conn today through Thursday. The event will feature a keynote address by EPA air chief Bill Wehrum and Janet McCabe, who served at the agency during the Obama administration.

Fanning, Audi CEO Address Aspen Ideas Festival – The 2018 Aspen Ideas Festival continues this week after starting last Thursday and will turn its focus to energy. Aspen is the nation's premier, public gathering place for leaders from around the globe and across many disciplines to engage in deep and inquisitive discussion of the ideas and issues that shape our

lives and challenge our times. Panels include an AV panel and a hurricane response panel with FEMA's Brock Long (hosted by our friend Andy Revkin) today; a natural disaster rebuilding panel focused with SoCo's Chris Womack, our friend Jeff Goodell and PR Gov Rossello and a cybersecurity discussion with Ash carter and SoCo's Tom Fanning; a Wednesday panel on cities and technology with Audi President Scott Keough and the signature conversation event featuring former Sect Of State John Kerry; a Trade conversation with Trade Rep Bob Lighthizer on Thursday and a Friday afternoon panel with former EPA head Lisa Jackson on the Clean Energy revolution. See the full agenda here.

Forum to Talk Eastern Europe Energy – The Atlantic Council Global Energy Center and the Hungarian Presidency of the Visegrád Group holds its "Towards 21st Century Energy Systems in Central & Eastern Europe" conference today. The event will feature discussion and debate on the strategic and policy implications of the Trump Administration's energy agenda and its impact on the transatlantic relationship, with special attention paid to the Central and Eastern European region. The expert panels will discuss the impact of the US' energy agenda on Central and Eastern Europe and innovation in Central and Eastern European energy systems.

Brookings Talking Global Markets With Experts – The Cross-Brookings Initiative on Energy & Climate will host Fatih Birol in a discussion today facilitated by Initiative Co-Chair David G. Victor. Both renowned energy experts, they will discuss the latest updates in global energy, including recent evolutions in global markets and prices, and the intersections of climate change and energy policy. Fatih Birol is executive director of the International Energy Agency (IEA), and has been named by Forbes Magazine as one of the most influential people in world energy, and "Energy personality of the year" in 2017 by the Financial Times. He is also chair of the World Economic Forum's (Davos) Energy Advisory Board and serves on the U.N. Secretary-General's Advisory Board on Sustainable Energy for All. After the session, panelists will take audience questions.

ACEEE Forum Set – Tomorrow at the National Press Club, the American Council for and Energy Efficient Economy (ACEEE) will convene a one-day symposium to highlight international energy efficiency best practices, with a particular focus on opportunities for improvement in the United States. Our research has shown that energy efficiency can be a low-cost, powerful tool for countries to meet their energy and environmental goals and to sustainably increase shared prosperity. At this event, ACEEE will release its biennial International Scorecard, which examines the energy efficiency policies and performance of the world's 25 largest energy-consuming countries. The scorecard evaluates countries based on 35 metrics and shows how all can substantially improve their energy efficiency. The symposium will feature four panels that will explore: (1) scorecard findings, (2) lessons learned from high-performing countries, (3) opportunities for the United States, and (4) notable efforts and opportunities for global companies.

CSIS Hosts Climate Investments Head – Tomorrow at 9:00 a.m., the CSIS Energy & National Security Program will host Pratima Rangarajan, CEO of Oil and Gas Climate Initiative (OGCI) Climate Investments, for a conversation on OGCI Climate Investments within the context of the OGCI, why the fund was founded last year, and how and why Climate Investments differentiates itself from other funds. OGCI Climate Investments intends to invest $1 billion over the next ten years to develop and demonstrate innovative technologies which could significantly curb global greenhouse gas emissions.

Senate Energy Hosts DOE Nominees – The Senate Energy and Natural Resources Committee holds a hearing tomorrow at 10:00 a.m. on pending DOE nominations, including Daniel Simmons to head the Renewable Energy office; Karen Evans to be an assistant secretary of Energy for Cybersecurity, Energy Security and Emergency Response; Teri Donaldson to be Energy General Counsel and Dr. Chris Fall to head the DOE Science office.

House Resources Panel to Look at Offshore Wind – The House Natural Resources panel on Energy will hold a legislative hearing on three bipartisan offshore wind energy proposals tomorrow at 10:00 a.m. The hearing will cover H.R. 5291, would create a new federal grant program to educate and train offshore wind workers as they transition from other industries. It would give priority to community colleges and organizations that aid minority populations. The second bill would require the federal government to devise a schedule and plan for offshore leases, while the third bill would amend the Outer Continental Shelf Lands Act to apply to U.S. territories such as Guam. BOEM's James Bennett and NOIA's Randall Luthi testify.

Opponents of Gas Compressor Hold Event – Opponents of a gas compressor station in Maryland will hold an event at George Washington's Mount Vernon tomorrow at noon to outline a new campaign to oppose the construction. I doubt Dominion will take the opposition sitting down given this has been underway for more than two years and there has been no opposition until now.

House Energy Panel Looks at Oil, Gas Geopolitics – The House Energy and Commerce Energy Subcommittee holds a hearing tomorrow at 1:00 p.m. on the shifting geopolitics of oil and gas. Witnesses include Daniel Yergin, Harold Hamm and Sempra's Dennis Arriola.

House Oversight Panel Looks at Forest Service Roads – The House Oversight and Government Reform Interior, Energy and Environment Subcommittee holds a hearing tomorrow at 2:00 p.m. on access to public lands and the effects of forest service road closures.

Indonesian Energy Minster to Address CSIS – The CSIS Southeast Asia Program and CSIS-Pertamina Banyan Tree Leadership Forum will host a forum tomorrow at 2:00 p.m. featuring Ignasius Jonan, Minister for Energy and Mineral Resources of the Republic of Indonesia. Minister Jonan's speech will be preceded by opening remarks from Ms. Nicke Widyawati, acting Chief Executive Officer of PT Pertamina. Jonan spoke to the US Chamber of Commerce today at WGC.

Forum to Look at Iran Enviro Challenges – The Atlantic Council Global Energy Center holds a discussion tomorrow at 3:00 p.m. on Iran's Environmental Challenges. Environmental degradation has become a major issue in Iran and is a source of economic hardship, ill health, social disruption and recent political protests. The Atlantic Council's Future of Iran Initiative will launch a new paper, Environmental and Wildlife Degradation in Iran, by David Laylin, an ecologist with extensive personal ties and experience in rural Iran.

Hydro Conference Set – HydroVision International will be held in Charlotte, NC tomorrow through Thursday at the Charlotte Convention Center. HydroVision is the largest gathering of hydro professionals worldwide. The event highlights perspectives on the role of hydropower, explores issues affecting hydro resources, and helps participants develop a vision to meet challenges and ensure the future sustainability of hydro.

FERC Holds Grid Conference – The Federal Energy Regulatory Commission holds technical conference tomorrow through Thursday on boosting grid resilience through improved software.

PLAYBOOK Breakfast to Feature McConnell – POLITICO Playbook holds a Breakfast interview with Senate Majority Leader Mitch McConnell on Wednesday morning at 8:00 a.m. at Ajax. POLITICO Playbook Co-Authors Anna Palmer and Jake Sherman hold the in-depth conversation to provide intelligence and insight on the Republican congressional agenda, along with policy, politics and news of the day.

Hearing to Look at Re-Org Plan – The House Oversight Committee holds a hearing at 10:00 a.m. on Wednesday examining the Administration's Government-wide Reorganization Plan.

Forum to Look at National Lab Ideas – The Information Technology and Innovation Foundation holds a forum on Wednesday at noon in 2325 Rayburn to look at new ideas for strengthening partnerships at DOE's National Labs. Two promising ideas for providing such connections are the proposed Impact for Energy Foundation and the pilot small business voucher program. The former would make it easier for companies and philanthropists to work collaboratively with intramural teams at DOE labs. The latter provides small businesses that need sophisticated insights with no-cost access to lab experts who can accelerate their innovations. Speakers will include Reps. Randy Hultgren and Ben Ray Luján, as well as Rita Baranwal, Director of (GAIN) Gateway for Accelerated Innovation in Nuclear at the Idaho National Laboratory.

Forum to Look at Russian NatGas Issues – The American Foreign Policy Council discussion on Wednesday at Noon in 902 Hart on Russian Revanchism and Nord Stream II pipeline Project. The event features a discussion with the heads of parliaments of Ukraine, Georgia, Moldova, and Lithuania. Representing countries that are in the zone of direct military

threat from revanchist Russia, the speakers will discuss the complex security situation in Central and Eastern Europe as a result of the Russian Federation's long-term aggressive policies.

Senate Hearing to Look at Infrastructure Permitting – The Senate Homeland and Governmental Affairs Committee holds a hearing Wednesday at 2:30 p.m. to look at ways of streamlining the permitting process for large infrastructure projects. Witnesses will include CEQ's Alex Herrgott, former Senate Energy Chair Mary Landrieu, acting executive director of the Federal Permitting Improvement Steering Council Angela Colamaria, Joseph Johnson of the U.S. Chamber of Commerce; Christy Goldfuss of the Center for American Progress, North America's Building Trades Unions head Sean McGarvey and Jolene Thompson, executive vice president of member services and external affairs at American Municipal Power.

Forum to Look at Energy Policy In Brazil – On Thursday at 9:00 a.m., the Inter-American Dialogue will hold a forum to look at energy policy in Brazil. The event features a panel discussion on the recent oil licensing rounds, opportunities for private investment in the oil, gas and power sectors, and the outlook for energy policy next year.

Forum to Look at Fossil Fuels in Sustain Energy Future – The U.S. Energy Association holds a forum on Thursday at 10:00 a.m. to look access to affordable, reliable, sustainable, and modern energy services while reducing greenhouse gas emissions and the carbon footprint of the energy sector. This briefing seeks to discuss the following within the context of the 2030 Agenda including recommendations on Carbon Capture Use and Storage; financing investment in fossil energy; transformation of the Energy System, among other things. The speaker will be Scott Foster, the Director of the Sustainable Energy Division with the United Nations Economic Commission for Europe.

Chatterjee Headlines Grid Forum – Icons of Infrastructure hold a forum at the National Press Club on June 28th afternoon looking at the transformation of the energy grid. The forum will look at how needed research and development efforts gets funded and what are the stakes for consumers, the energy sector and policymakers. In one packed day of headline speakers, panel debates, creative networking opportunities, open discussions, and an in-depth analysis, you'll learn about exciting developments in domestic energy markets, and hear insider perspective on the challenges we face. Speakers include FERC Commissioner Neil Chatterjee, NREL's Peter Green, DOE's Eric Lightner and many more.

Forum to Look at Climate Risk – At the June Adaptation Community Meeting, the US Agency for International Development (USAID), the World Bank, the International Finance Corporation, and the Inter-American Development Bank will come together on Thursday at 4:00 p.m. At the World Bank to discuss each organization's current and emerging approaches to climate risk management. The discussion will highlight each organization's approach, initiatives to track and assess the effectiveness of climate risk management, lessons learned, and ideas for the future.

Mulvaney Headlines Annual CEI Dinner – On Thursday June 28th, the Competitive Enterprise Institute holds its annual dinner and reception at the Marriott Marquis. National Review's Jonah Goldberg will be master of ceremonies and keynoter is OMB chief Mick Mulvaney.

Wilson Forum to Look at Arctic – The Wilson Center holds forum on Friday focused on how the National Guard is contributing to the advancement of Arctic and cold weather capabilities within U.S. defense institutions. Senior leaders representing the National Guard Arctic Interest Council will discuss how the National Guard is contributing to the advancement of Arctic and cold weather capabilities within U.S. defense institutions.

IN THE FUTURE

JULY 4th HOLIDAY

Event to Honor Tesla Birthday – On Friday evening July 6th, the International Club of DC and the Embassy of Croatia host a dinner reception and delightful evening of Croatian culture, music, wine, and cuisine on the occasion of the 162nd anniversary of the birth of Croatian-born scientist Nikola Tesla. During the event, Tesla will have a Model S and Model X

on display. Tesla product experts will be on hand to answer questions and show you how electric vehicles can fit seamlessly into your lifestyle. Test rides will be offered on a first come, first serve basis.

Clean Energy Forum on Schedule – The 2018 Congressional Clean Energy Expo and Policy Forum will be held on July 10th and brings together up to 45-55 businesses, trade associations, and government agencies to showcase renewable energy and energy efficiency technologies.

BPC Forum to Examine Oil, Gas Issues – On Thursday July 12th at 10:30 a.m., the Bipartisan Policy Center (BPC) convenes a panel of experts to examine the current state of the Environmental Social Governance (ESG) movement in the oil and gas sector and explore what's coming next. This movement continues to gain traction in a time when the regulatory agenda has changed significantly under the Trump Administration. ESG is particularly significant for the energy sector, specifically as shareholder resolutions surrounding climate change continue to take center stage in the media and in the boardroom.

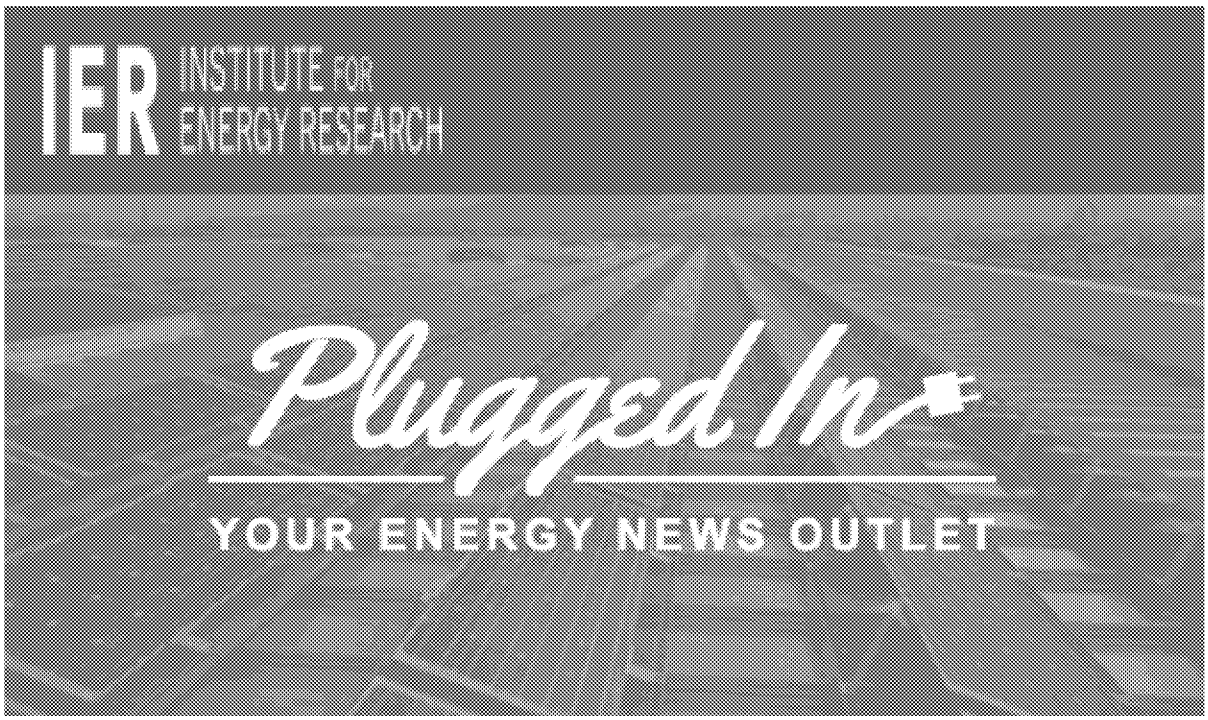
Duke CEO, CARB Chair, Others Headline POLITICO Summit – POLITICO is hosting its second Pro Summit on July 17th at the Renaissance Hotel. The Pro Summit brings together Pro subscribers, expert reporters, key decision-makers, and others who are shaping the policy landscape for a full day of incisive conversations. Summit speakers include Rep. Joe Crowley, Duke CEO Lynn Good, FERC Chair Kevin McIntyre, Amy Myers Jaffe of the Council on Foreign Relations, Coal CEO Bob Murray, California Air Resources Board Chair Mary Nichols and many others. Duke Energy is the main event sponsor.

Grid Forum Set for Iowa – The TransGrid-X 2030 Symposium will be held on July 26th in Ames, Iowa. The event will showcase the long-awaited NREL Seam Study—a concept featuring bi-directional high-voltage transmission; 600 GW of wind, solar and gas-fired generation; and a trillion-dollar economic event, if fully built. Our friends Rob Gramlich and former FERC Chair Jim Hoecker will be among the speakers.

EPRI Hosts Electrification Conference – The Electric Power Research Institute (EPRI) hosts the inaugural Electrification 2018 International Conference and Exposition on August 20th to 23rd in Long Beach CA. Hosted by the and sponsored by more than 20 major utilities and organizations, this annual conference will bring together utility leaders, regulators, researchers, academia, vendors, economic development groups, and energy users from diverse manufacturing, transportation, industrial, and agriculture sectors around the globe. SoCo CEO Tom Fanning is among the many speakers.

Message

From: Institute for Energy Research [info@ierdc.org]
Sent: 4/18/2019 1:59:19 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Update on Big Green, Inc.



SURGING

This week, IER released an update to its Big Green, Inc. database, a project launched last fall which seeks to shine a long overdue spotlight on the massive amounts of money fueling the national environmental lobby.

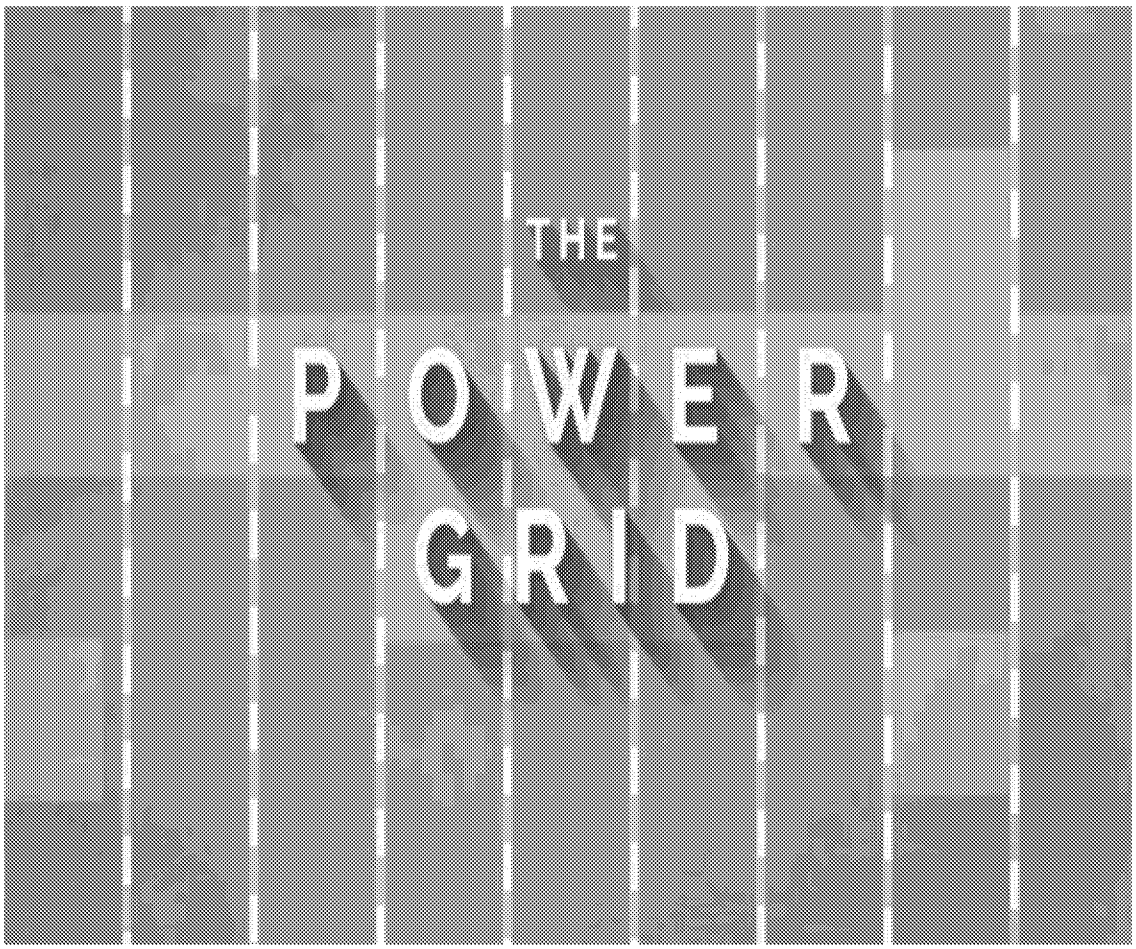
We have added four new left-leaning, grant-making organizations into the Big Green, Inc. database. Those foundations are the Wyss Foundation, Tides

Foundation, John D. and Catherine T. MacArthur Foundation, and The Rockefeller Foundation, which together funded more than 660 green groups across the country between 2008-2016.

The Big Green, Inc. database now tracks environmental grants stemming from 14 foundations and directed to over 1,900 grassroots activists groups, totaling more than $4.2 billion. This data helps reveal the ways in which the green lobby works to disrupt the development of America's energy resources.

Read a summary of the updates here.

From The Studios



With renewed calls for the U.S. to shift its electric grid to 100% renewable energy, it is more important than ever to understand how important, and intricate, the national electric grid really is. Watch *The Story of Electricity* to get a better understanding of what makes modern life possible.

Watch the full video here.

Latest Analysis

- Electric Utility Emissions Continue to Decline Through 2018

- Revolution or Incrementalism?
- Battery Density and Technology Is a Problem for a 100-Percent Renewables World

THE WIRE

IER News Highlights

- IER's research on carbon taxes quoted by the Heartland Institute.
- IER's Dan Kish quoted by *The Daily Caller* on Elizabeth Warren's new plans for public lands.

THE BUZZ

IER on Social Media

- Over 254k total people Reached
- Over 600 interactions on Tweets
- Nearly 9,000 interactions on Facebook posts

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Subscribe to the Plugged In Podcast on iTunes

THE BREAKER

"In the last 10 years, the emissions reductions in the United States has been the largest in the history of energy – almost 800 million tons – and this is a huge decline of emissions."

– Faith Briol, executive director of the International Energy Agency

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Message

From: Dolley Madison [fedsoc@fed-soc.ccsend.com]
on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 11/2/2018 12:31:15 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: New at The Federalist Society

Faculty Conference, National Lawyers Convention, Fellowship Opportunities

THE FEDERALIST SOCIETY

November 2, 2018

21st Annual Faculty Conference

January 3-4, 2019 | New Orleans, LA

Registration is open for the 21st Annual Faculty Conference. The conference will feature panels on substantive due process, tech privacy and data security, and antitrust. The winners of our Young Legal Scholars Paper Competition will present their papers, and various other attendees will invite feedback on works they have in progress. To view the full schedule and to register, visit our website.

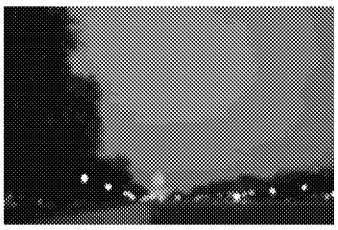
[Register]

Upcoming Events Across the Country

Our website contains a detailed list of events. [Find an event] #FedSocEvents

Chapter	*Topic & Speakers*	*Date & Time*
Indianapolis Lawyers Chapter	The Second Amendment in the New Supreme Court • **Stephen P. Halbrook,** Senior Fellow, The Independent Institute	November 5 12:00 p.m.
Miami Lawyers Chapter	Risk Protection Orders (RPO) Fla. Sat. 790.401 - Practical applications and constitutional issue • **Bradford Cohen, Esq.,** Bradford Cohen Law • **Brooke Latta, Esq.,** Assistant General Counsel, Broward Sheriff's Office • **Hon. Raag Singhal,** Seventeenth Circuit Court, Broward County, Florida	November 7 11:30 a.m.
Houston Lawyers Chapters	Ending, and Beginning: Lessons Learned and Future Priorities from the Outgoing and Incoming Solicitors General of Texas • **Kyle Hawkins,** Solicitor General of Texas • **Scott Keller,** Former Solicitor General of Texas	November 8 11:30 a.m.
Puget Sound Lawyers Chapter	Lawyer & Law Student Happy Hour	November 8 5:00 p.m.
Phoenix Lawyers Chapter	2018 Election Review on November 8 • **Bill Scheel,** Democratic political consultant and former Chief of Staff to Phoenix Mayor Phil Gordon • **Kory Langhofer,** Managing Attorney at Statecraft PLLC and Phoenix Fed Soc President (Moderator) • **Steve Voeller,** Republican political consultant and former Chief of Staff to U.S. Senator Jeff Flake	November 8 6:00 p.m.

2018 National Lawyers Convention



November 15-17, 2018 | Washington, DC
Registration is open for the 2018 National Lawyers Convention. The theme for this year's Convention is: Good Government through Agency Accountability and Regulatory Transparency. To view the full schedule and to register, visit our website.
[Register]

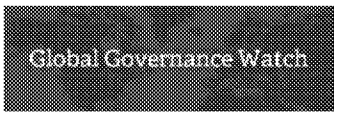
Olin-Searle-Smith-Darling Fellows in Law

The Olin-Searle-Smith-Darling Fellows in Law program offers top young legal thinkers the opportunity to spend one to two years working on developing their scholarship or engaging in clinical work with the goal of entering the legal academy. Applications are available for full-time, part-time, and clinical fellowships. The deadline to apply is March 15, 2019.
[Register]

Interested in attending one of our many student events? [Find an event]

New Online

[ARTICLE] Schaefer: US Should Use Foreign Aid as Leverage at UN



In a recent article, Brett Schaefer of the Heritage Foundation calls for the US government to take more seriously the need to use foreign aid as leverage in pushing countries to back American priorities at the UN General Assembly.
[Read]

FedSoc Blog

Civil Justice Update : Arkansas Issue 1 - Off the Ballot

- By Mark D. Wankum

Article: Debating Birthright Citizenship - Two Perspectives

- By Gerald Walpin, David B. Rivkin, John C. Yoo

Federalism and the Race to 5G Wireless Networks

- By Anthony T. Clark

[Read]

[VIDEO] 2018 Pennsylvania Chapters Conference

Opening Address

- Featuring Hon. Ronald D. Castille

Approaches to Constitutional and Statutory Interpretation

- Featuring Hon. Anne E. Covey, Prof. Michael Moreland, Hon. David N. Wecht, Moderator: David R. Osborne

Lunch and Keynote Address

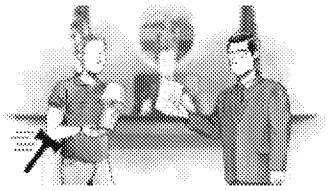
- Featuring Hon. Jeffrey S. Sutton

Hot Topics in Pennsylvania Courts

- Featuring Hon. P. Kevin Brobson, Hon. Victor P. Stabile, Moderator: Linda A. Kerns

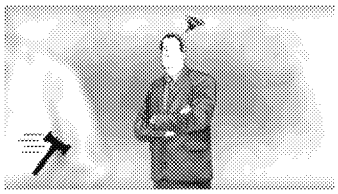
[Watch]

[VIDEO] Lamps Plus, Inc. v. Varela



SCOTUSbrief
Featuring J. Michael Connolly
[Watch]

[VIDEO] Frank v. Gaos



SCOTUSbrief
Featuring Jeremy Kidd
[Watch]

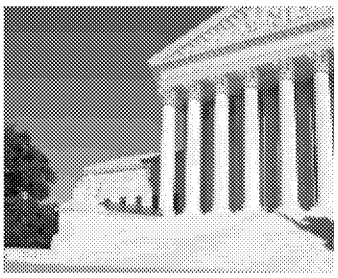
[PUBLICATION] Giving Credit for Shaping the Constitution

Federalist Society Review, Volume 19
By Karen J. Lugo
[Read]

[PODCAST] Debating Birthright Citizenship

Federalism & Separation of Powers Practice Group
Featuring John C. Eastman, John C. Yoo
[Listen]

[PODCAST] Book Review: Judicial Fortitude: The Last Chance to Rein In the Administrative State

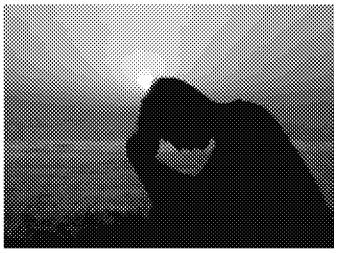


Administrative Law & Regulation, Federalism & Separation of Powers, Litigation Practice Groups
Featuring Peter J. Wallison
[Listen]

[PODCAST] Ethics CLE Teleforum 2018: New Issue in Legal Ethics, ABA Model Rule 8.4(g)

Professional Responsibility & Legal Education
Featuring Josh Blackman
[Listen]

[PODCAST] Diversity and Elimination of Bias CLE Credit Teleforum: Litigation For A Higher Cause

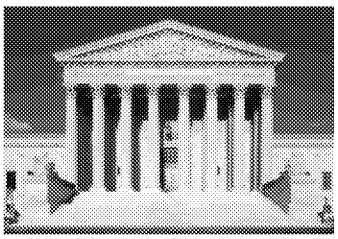


Professional Responsibility & Legal Education Practice Group
Featuring James A. Sonne, Walter M. Weber
[Listen]

[PODCAST] Guidance Against Guidance

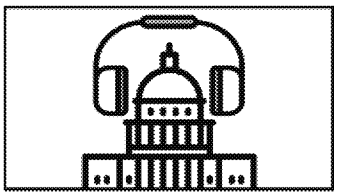
Administrative Law & Regulation, Litigation Practice Groups
Featuring John C. Richter
[Listen]

[PODCAST] Update: Workers' Speech Rights in the Wake of Janus



Free Speech & Election Law Practice Group
Featuring Robert Alt
[Listen]

[PODCAST] Necessary & Proper Episode 29: Is the Nondelegation Doctrine Really Dead?



Article I Initiative
Featuring Todd F. Gaziano, Amanda Shanor, Evan Bernick
[Listen]

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Washington, DC 20006

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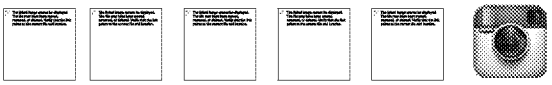

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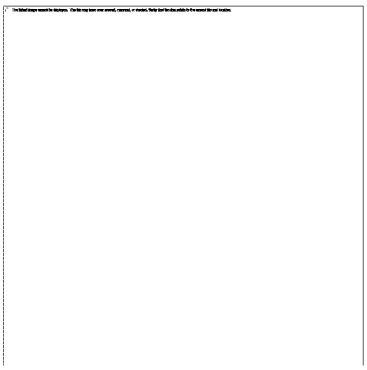

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Message

From: Shoaff, John [Shoaff.John@epa.gov]
Sent: 4/24/2018 3:39:58 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: SAB Regulatory Actions Best Practices Doc.
Attachments: Best Practices for EPA Engagement with the Science Advisory Board March 2015.pdf

Clint,

Here's the document I mentioned, see attached. The table at page 2, in particular, which is a quick outline of the process.

Deliberative Process / Ex. 5

Thanks.

John

JOHN SHOAFF | DIRECTOR
OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-B
1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA
Shoaff.john@epa.gov | 1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE

Message

From: Dolley Madison [fedsoc@fed-soc.ccsend.com]
on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 6/25/2018 4:20:06 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Calls This Week -- June 25, 2018

June 25, 2018

Teleforum Calls This Week

Dial 888-752-3232 to Participate

Courthouse Steps: Gerrymandering in the Supreme Court: *Gill v. Whitford*, *Benisek v. Lamone* and *Abbott v. Perez*

Free Speech & Election Law Practice Group

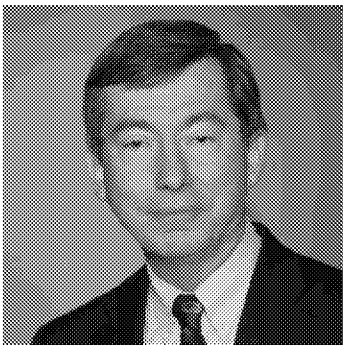
Today, Monday, June 25, 2018 | 4:00 p.m. ET

Hans A. von Spakovsky
Manager
Election Law Reform Initiative and
Senior Legal Fellow
The Heritage Foundation

The U.S. Supreme Court's docket included three cases this term on the legal limits of redistricting. All three cases have now been disposed of by the Court. Our expert will analyze the three cases together, and discuss the future of redistricting in the states, and at the Court.

Courthouse Steps: *South Dakota v. Wayfair, Inc.* Decided

Litigation and Federalism & Separation of Powers Practice Groups
Wednesday, June 27, 2018 | 2:00 p.m. ET



Dr. John S. Baker, Jr.
Visiting Professor
Georgetown Law School

The Dormant Commerce Clause of the Constitution prohibits states from imposing excessive burdens on interstate commerce without congressional approval. Consistent with this doctrine, in 1967, the Supreme Court held that a state cannot require an out-of-state seller with no physical presence in that state to collect and revoke taxes for goods sold or shipped into the state. The Court affirmed this holding in 1992 and 2015. However, in 2015, Justice Kennedy wrote a concurring opinion asking whether the Court should continue following precedent in light of additional dormant Commerce Clause cases and the recent significant technological and social changes that affect interstate commerce.

In 2016, the South Dakota Legislature passed a law requiring sellers of "tangible personal property" who do not have a physical presence in the state to remit sales tax according to the same procedures as sellers who do have a physical presence. The act limited the obligation to sellers with gross revenue from sales in South Dakota over $100,000, or 200 or more separate transactions, within one year.

The legislation's stated purpose was to help the state maintain revenue in the face of growing internet sales and a decrease in sales tax collections.

Following the passage of the law, South Dakota sued many retailers who failed to comply. The state courts of South Dakota ruled for the retailers, considering themselves "duty bound to follow" the previous Supreme Court rulings. On June 21, the Supreme Court ruled in favor of South Dakota in a 5-4 decision authored by Justice Kennedy.

EPA's CAFE: What's on the Menu for Fuel Economy and Greenhouse Gas Standards?

Regulatory Transparency Project

Friday, June 29, 2018 | 12:00 Noon ET

Sean H. Donahue
Partner
Donahue & Goldberg

Jacqueline Glassman
Partner
King & Spalding

Moderator: James Conde
Associate
Boyden Gray & Associates

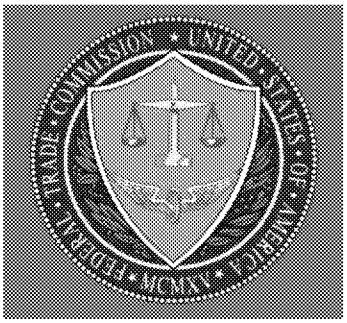
Host: Devon Westhill
Director
Regulatory Transparency Project

EPA Administrator Scott Pruitt and Secretary of Transportation Elaine Chao are proposing to roll back the Obama Administration's fuel economy and greenhouse gas standards for model years 2022 to 2025. The proposed rollback will have vast political and economic consequences for automakers, auto dealers, and drivers. Is the rollback legally justified and appropriate? Is it good for consumers? Will the proposed rollback prompt California to enforce its own more stringent standards? If so, what are the legal and policy ramifications of overlapping federal and state standards? This Teleforum call will discuss these and other questions related to the Trump Administration's proposed rollback of the fuel economy and greenhouse gas standards.

Previously Recorded Calls

Courthouse Steps: *LabMD Inc. v. Federal Trade Commission*

Telecommunications & Electronic Media Practice Group and Regulatory Transparency Project Teleforum



The 11th Circuit's decision in *LabMD v. FTC* comes just as the new FTC Chairman and Commission have been sworn in. The long-awaited decision arises in a case which raised fundamental questions regarding the FTC's data breach enforcement authority under Section 5 of the FTC Act and the level of injury that gives rise to a cognizable privacy harm. A fraught factual and procedural history - involving allegations of FTC misconduct and an ALJ decision in LabMD's favor reversed by the full Commission - preceded the 11th Circuit's action. Is this the end of the road or will the Court's decision be subject to further appeal? What are the implications for the new Commission and its privacy enforcement authority?

[Listen]

Is it a Taking When the Government Floods Your House?

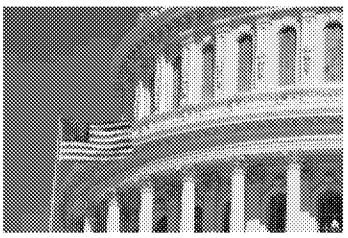
Environmental Law & Property Rights Practice Group Teleforum

In the aftermath of Hurricane Harvey, the US Army Corps of Engineers deliberately flooded thousands of homes and businesses because they believed it was necessary in order to prevent even worse flooding elsewhere. Many of the affected property owners have filed lawsuits claiming that this deliberate flooding qualifies as a taking that requires the government to pay "just compensation" under the Takings Clause of the Fifth Amendment. The outcome of these cases may well set important precedents for the future and Professor Richard Epstein will join us to discuss them.

[Listen]

Balancing Executive and Legislative Branch Interests in Congressional Oversight

Environmental Law & Property Rights Practice Group Teleforum



One might expect that by now the Legislative and Executive Branches would have worked out some understood and accepted protocols for balancing the interests of the Legislative Branch in satisfying its oversight obligations, and of the Executive Branch in enforcing the laws (and investigating their possible violation) without disruptive interference. However, year after year, Congress seeks information the Executive refuses to provide. During the last Administration, Congress seemed powerless to enforce its determination to get to the bottom of DOJ's Fast & Furious, IRS's Tea Party targeting, and other apparent agency scandals. Now, some suppose that it is the Department of Justice's ongoing investigation into the last Administration's conduct during the 2016 election season that is preventing it from providing, at least for now, all the information Congress requests on that subject. News reports of this conflict between two co-equal branches of government saturate newspapers, the airwaves, and the internet. Most focus on Congress's right to and need for the information, without acknowledging legitimate reasons the Administration might have for withholding it or delaying its production.

This Teleforum offers a balanced representation of the competing interests. Morton Rosenberg, retired Congressional Research Service Senior Legal Analyst and author of When Congress Comes Calling: A Study on the Principles, Practices, and Pragmatics of Legislative Inquiry, explains the history of and authority for Congressional demands for information from Executive Branch agencies. Washington attorney William Moschella, a former Congressional Staff Counsel who later became President George W. Bush's Assistant Attorney General for the Office of Legislative Affairs - the office responsible for DOJ's responses to Congressional inquiries - offers insight into the considerations accompanying such responses.

[Listen]

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Message

From: Shoaff, John [Shoaff.John@epa.gov]
Sent: 7/5/2018 4:29:03 PM
To: Woods, Clint [woods.clint@epa.gov]
CC: Hockstad, Leif [Hockstad.Leif@epa.gov]
Subject: Draft Admin. Response to SAB re: 2017 Actions & Scientific Transparency
Attachments: Draft 070518 - Admin Response to SAB re 2017 Actions + Sci Transpy.docx

Clint,

With compliments to Leif, here's an updated draft response to the SAB. Included a few marginal questions and notes for your review/awareness. Please refine and share with Justin as you like and let me know how/when you'd like to also reach out to ODs/staff for feedback on the response and potential briefings and/or questions to the Board for consideration. Thanks!

John

Message

From: Tubb, Katie [Katie.Tubb@heritage.org]
Sent: 4/17/2019 3:24:11 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: introduction and LNT informational question

Hello Clint,
My name is Katie Tubb and I work for the Heritage Foundation on energy and environment issues. I am trying to find someone at EPA who could get me up to speed on EPA's work on the "linear no threshold" approach to regulation that was included in the scientific transparency proposed rule, and particularly the implications for radiation exposure standards.

I reached out to Mandy Gunasekara and she recommended I speak with you. I'd appreciate the chance to hear what EPA has done and where it's going (or not going) if you have some time in the next few weeks.

Thanks for considering,

Katie

Katie Tubb
Senior Policy Analyst, Energy and Environmental
Institute for Economic Freedom
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
202-675-1767
heritage.org

Message

From: Regulatory Transparency Project [fedsoc@fed-soc.ccsend.com]
on behalf of Regulatory Transparency Project [info@fed-soc.org]
Sent: 4/3/2018 4:06:54 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Starting Now: Is the FDA's Rule on Cigars & Vaping Products Constitutional?

Regulatory Transparency Project
Unlocking Innovation & Opportunity

April 3, 2018

Our Call is Beginning NOW

Dial 888-752-3232 to Participate

Is the FDA's Rule on Cigars & Vaping Products Constitutional?

A Teleforum Sponsored by the Regulatory Transparency Project
Tuesday, April 3, 2018 | 12:00 p.m. ET

Todd F. Gaziano
Director
Center for the Separation of Powers
Pacific Legal Foundation

Michael J. Edney
Partner
Norton Rose Fulbright

Invoking the Tobacco Control Act, the FDA issued an omnibus regulation of cigars, pipe tobacco, and vaping products in 2016. That Rule required all of these products to go through an FDA review process similar to that for prescription drugs and medical devices and to bear large warnings covering 30 percent of two panels of each package and 20 percent of all advertisements-even though some vaping products contain no tobacco or nicotine. The Rule also prohibits truthful statements about the products, including whether they contain tobacco or not, without costly FDA pre-approval, and the speakers bear the burden to prove the net value of their speech to consumers as a whole, whatever that means. Although the Trump Administration delayed some aspects of the Rule, current and delayed mandates threaten the vitality of major industry sectors, including the large health warnings and prior approval of truthful speech. In addition to the usual regulatory questions, our speakers raise fundamental constitutional challenges to the Rule. Mr. Gaziano and Pacific Legal Foundation are representing nine vaping retailers and harm reduction advocates who filed three lawsuits arguing that the Rule is invalid because it was issued by an FDA employee who is not constitutionally authorized to issue regulations pursuant to the Appointments Clause. Those suits raise key questions of democratic accountability and Executive Power: Who has the authority to impose a massive web of regulations on an entire industry? Mr. Edney represents several cigar and pipe tobacco trade associations and other individual cigar manufacturers and retailers challenging the Rule. Even with the postponement of some compliance deadlines, the Appointments Clause and First Amendment challenges in both sets of cases are ripe. If the FDA's arguments prevail, the government could require large warnings blanketing any package or advertisements for virtually any product and ban truthful statements about those products without bureaucratic pre-approval.

Featuring:

- **Todd F. Gaziano** , Director, Center for the Separation of Powers, Pacific Legal Foundation
- **Michael J. Edney**, Chairman and Partner, Norton Rose Fulbright's White Collar Criminal Defense Practice Group

- ***Moderator:*** **Devon Westhill**, Director, Regulatory Transparency Project

To listen to this Regulatory Transparency Project Teleforum, please dial 888-752-3232 at 12:00 p.m.

To learn more about the Regulatory Transparency Project, visit **RegProject.org**.

Dial 888-752-3232 to Participate

Speaker Biographies

Todd F. Gaziano

Todd Gaziano joined PLF in 2014 as Executive Director of its DC Center and Senior Fellow in Constitutional Law. Todd has served in all three branches of the federal government, worked in the private sector, and is a well-known scholar and leader in the liberty legal movement.

Todd attended the University of Chicago Law School, where he was a John M. Olin Fellow in Law and Economics. His public law work includes service as a law clerk for U.S. Fifth Circuit Judge Edith Jones, in the U.S. DOJ Office of Legal Counsel, as a chief subcommittee counsel in the U.S. House of Representatives, and as the founding director of The Heritage Foundation's Legal Center. He also had a six-year term as commissioner on the U.S. Commission on Civil Rights, where he reported on civil rights developments and conducted oversight and investigations of civil rights agencies. Early in his career, he was as a litigator in Houston, and more recently, was the Executive Vice President and Chief Legal Officer of an innovative healthcare delivery and IT company.

Todd is a frequent legal commentator in print, on radio and TV, before congressional committees, and in other public settings. With more than 20 years

in the liberty movement, Todd continues to publish scholarly papers and op-eds on constitutional and legal reform topics. He has a special interest in the constitutional limits of government, especially federalism and the separation of powers, and protections for individual rights. Several of his scholarly articles have influenced landmark Supreme Court litigation, congressional policy, and presidential actions. He also has worked to increase the effectiveness of many organizations within the freedom-based public interest legal movement.

Todd and his wife, also a practicing attorney, reside in Northern Virginia and are proud of their liberty-minded daughter, who is studying at the Antonin Scalia Law School to continue the family trade.

Michael J. Edney

Michael J. Edney is chairman of Norton Rose Fulbright's White Collar Criminal Defense Practice Group and partner in its Washington office. He guides clients through all aspects of government regulation, criminal and regulatory investigations, and civil litigation.

Mr. Edney vigorously defends corporations and individuals facing government agency inquiries and prosecutorial threats. Mr. Edney has represented clients before the Department of Justice, the Department of the Treasury and its Office of Foreign Assets Control (OFAC), the Department of State, the Department of Commerce, the Department of Defense, the Department of Health and Human Services, the Securities and Exchange Commission (SEC), the Commodities Futures Trading Commission (CFTC), the National Security Agency (NSA), congressional committees, and other government entities. In 2014, for example, Mr. Edney successfully negotiated a resolution of what was then the largest non-bank trade sanctions investigation in United States history, along with a resolution of charges under the Foreign Corrupt Practices Act (FCPA).

When companies encounter allegations of wrongdoing, Mr. Edney has conducted many internal investigations on their behalf, while carefully avoiding disruption of the client's important business operations. He has worked extensively with the Audit Committees and senior management of public companies to determine how to comprehensively resolve suggestions of misconduct.

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on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 6/22/2018 3:32:28 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: New at The Federalist Society

Tech Titans Event and Live Stream, 2018 Texas Chapters Conference, New Blog Posts, New Podcasts

THE FEDERALIST SOCIETY

June 22, 2018

The Tech Titans and National Security

June 28, 2018 | Washington, DC

The leading technology and Internet-based companies play a vital role in cybersecurity and national security. This National Security Symposium will bring together a range of people at the vital center of developing rules and parameters on these issues to debate and discuss how we might succeed in this era. This event is cosponsored by the International & National Security Law Practice Group and the National Security Institute at George Mason University's Antonin Scalia Law School. **This event will be live streamed.**

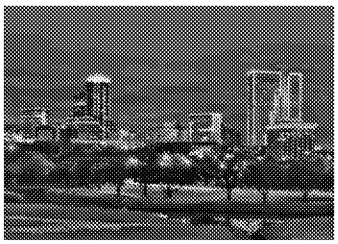
[Register]

Upcoming Events Across the Country

Our website contains a detailed list of events. [Find an event] #FedSocEvents

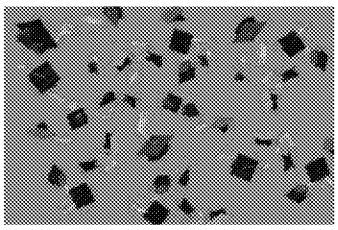
Chapter	*Topic & Speakers*	*Date & Time*
Little Rock Lawyers Chapter	Constitutional Interpretation and Andrews • **Lee Rudofsky,** Solicitor General, Arkansas • **Chad Pekron,** Quattlebaum, Grooms & Tull	June 26 11:00 a.m.
Atlanta Lawyers Chapter	Summer Barbeque • **Hon. William H. Pryor Jr.,** U.S. Court of Appeals for the Eleventh Circuit • **Hon. Lisa Branch,** U.S. Court of Appeals for the Eleventh Circuit • **Hon. Julie Carnes,** U.S. Court of Appeals for the Eleventh Circuit	June 26 6:00 p.m.
Louisville Lawyers Chapter	Is a Victims' Rights Constitutional Amendment Right for Kentucky? • **Hon. Whitney Westerfield,** Senate District 3, Kentucky • **J. David Niehaus,** former Deputy Appellate Defender for the Louisville Metro Public Defender's office, and amicus committee chair for the Kentucky Association of Criminal Defense Lawyers; • **Heather Gatnarek,** Legal Fellow with the ACLU of Kentucky • **Josh Crawford,** Co-Executive Director of the Pegasus Institute • **Aaron Silletto (Moderator),** Goldberg Simpson	June 27 11:45 a.m.
Vermont Lawyers Chapter	Summer Reception	June 28 5:00 p.m.

[EVENT] 2018 Texas Chapters Conference



September 7-8, 2018 | Fort Worth, TX
Registration is open for the 2018 Texas Chapters Conference. The program will include the Inaugural Gregory S. Coleman Memorial Lecture to honor the life, memory, and legacy of Texas' first Solicitor General. Associate Justice Clarence Thomas, Supreme Court of the United States, will serve as this year's Lecturer.
[Register]

Special Graduation Offer



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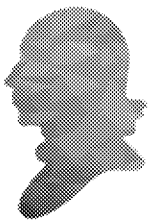

The Federalist Society is seeking an Assistant Director, Faculty Division. For more information and to apply, visit our website.
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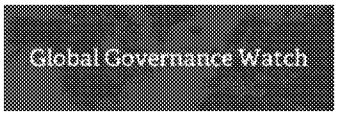
Interested in attending one of our many student events? [Find an event]

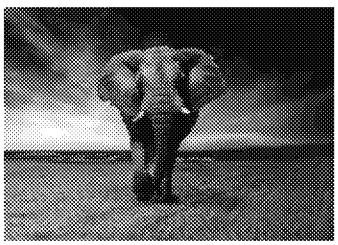
New Online

[ARTICLE] Schaefer: Flaws in UNHRC Sparked US Exit



Brett Schaefer of the Heritage Foundation argues, using data from the history of the UN Human Rights Council (UNHRC), that the Trump Administration's decision to exit the body is the right one and not indicative of "hostility" toward the international community.
[Read]

FedSoc Blog



Article I: Congress as Elephant

- By Nathan Kaczmarek

Conservative leaders to DeVos: Repeal illegal, harmful Obama-era "Dear Colleague" letter

- By Charles J. Szafir

Is the Special Counsel Lawfully Appointed?

Court Strikes Down Construction Union's Form Contract Language as a "Word Game" Designed to Impose Membership and Recognition

- By John N. Raudabaugh, Glenn Taubman

T-Mobile Merger and the 5G Revolution

- By John Kneuer

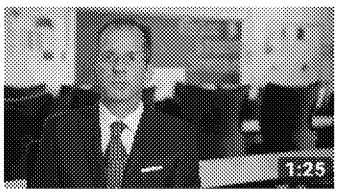
Net Neutrality - CRA Weekly Roundup 2

[Read]

[PUBLICATION] Impeachment: The Constitution's Fiduciary Meaning of "High...Misdemeanors"

Federalist Society Review, Volume 19
By Robert G. Natelson
[Read]

[VIDEO] Nicholas Quinn Rosenkranz: Reconstructing First Principles



National Student Symposium 2018
Featuring Nicholas Quinn Rosenkranz
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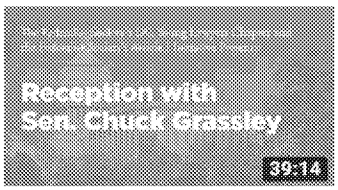
[VIDEO] Reception with Sen. Chuck Grassley

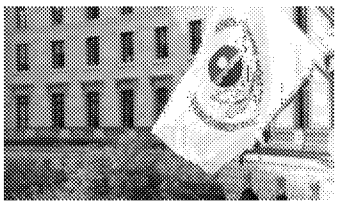


National Student Symposium 2018
Featuring Sen. Chuck Grassley, Leonard Leo, Lisa Ezell
[Watch]

[VIDEO] Determining Patent Quality

Regulatory Transparency Project
Featuring Saurabh Vishnubhakat
[Watch]

[PODCAST] Executive Overreach at the EPA? The Pebble Mine Clean Water Act Dispute



Environmental Law & Property Rights Practice Group
Featuring Shannen W. Coffin, Tom Collier, Myron Ebell, Robert Perciasepe
[Listen]

[PODCAST] The Lives of the Constitution

Federalism & Separation of Powers Practice Group
Featuring Ilya Shapiro, Joseph Tartakovsky
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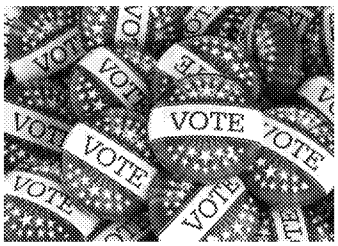
[PODCAST] Courthouse Steps Decision: Minnesota Voters Alliance v. Mansky



Free Speech & Election Law Practice Group
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[PODCAST] Courthouse Steps: LabMD Inc. v. Federal Trade Commission

Telecommunications & Electronic Media Practice Group
Featuring Neil Chilson, Scott D. Delacourt
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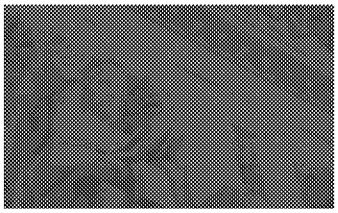
[PODCAST] McCoy v. Louisiana - Post-Decision SCOTUScast



SCOTUScast
Featuring Jay R. Schweikert
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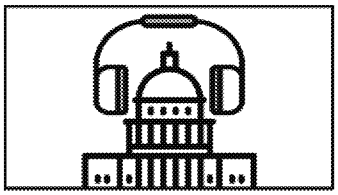
[PODCAST] Necessary & Proper Episode 19: Founding Principles as Pillars of Our Foreign Policy - Address by Rep. Mike Gallagher



Article I Initiative, Federalism & Separation of Powers Practice Group
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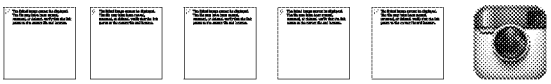

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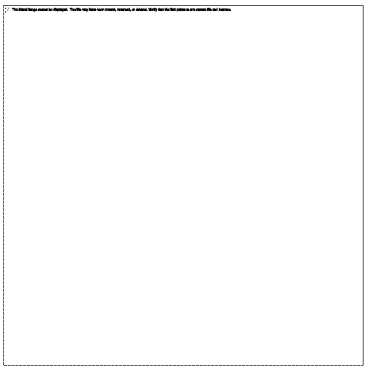

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From: American Energy Alliance [info=americanenergyalliance.org@mail150.sea101.rsgsv.net]
on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 6/22/2018 1:15:30 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: California dreamin

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In the Pipeline

MORNING ENERGY NEWS | 6.22.2018

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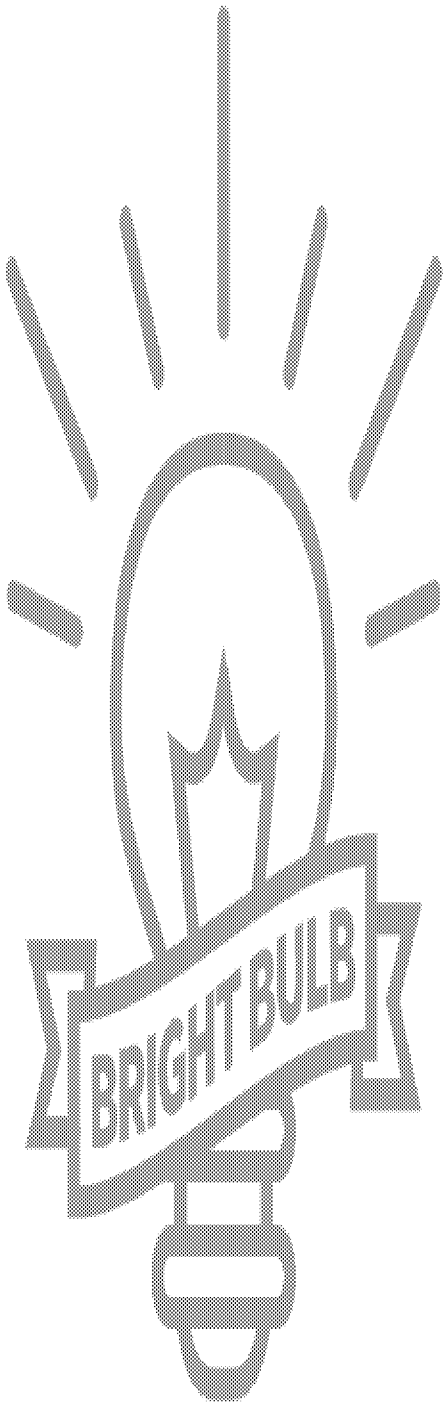
I thought leaving the Paris Agreement was the end of the world...

Reason (6/21/18) reports: "Nearly every country in the European Union is failing to live up to its Paris Agreement on climate change commitments to reduce their carbon emissions, a new report reveals. The report makes clear how difficult it is for countries with advanced economies to substantially reduce carbon emissions, even with political systems that are strongly committed to doing so... In contrast, U.S. carbon dioxide emissions continue their downward trend, dropping by 15.2 percent since 2007. In 2017, they fell by 0.5 percent. It is worth noting that a new report by the Rhodium Group consultancy suggests that the U.S. is on track to meet earlier Obama adminstration promises under the earlier Copenhagen Accord to reduce U.S. carbon dioxide emissions by 17 percent below their 2005 levels by 2020."

Where do EU countries stand on fighting climate change?
1 - TEMPTY1 100%
2 - SWEDEN 77%
3 - PORTUGAL 66%
4 - FRANCE 66%
5 - NETHERLANDS 58%
6 - LUXEMBOURG 56%
7 - DENMARK 49%
8 - GERMANY 45%
9 - CROATIA 40%
10 - FINLAND 42%
11 - LITHUANIA 42%
12 - LATVIA 41%
12 - ITALY 41%
14 - UNITED KINGDOM 37%
14 - AUSTRIA 37%
16 - SPAIN 35%
16 - BELGIUM 35%
18 - SLOVENIA 34%
18 - SLOVAKIA 34%
20 - CZECH REPUBLIC 33%
20 - ROMANIA 33%
22 - HUNGARY 32%
22 - GREECE 32%
24 - CYPRUS 30%
24 - MALTA 30%
26 - BULGARIA 28%
27 - ESTONIA 24%
28 - IRELAND 21%
29 - POLAND 16%
Very good
Good
Average
Poor
Very poor



"Would NextEra even be profitable without all these subsidies and mandates? At least it's not Solyndra, the Obama-connected solar power company that left the taxpayers holding the bag for $500 million when it collapsed. ("Obama's green-technology program was infused with politics at every level, The Washington Post found in an analysis of thousands of memos, company records and internal e-mails. Political considerations were raised repeatedly by company investors, Energy Department bureaucrats and White House officials.") Maybe we should drop all these subsidies, restrictions, mandates, and trade barriers and let the free market deliver the right mix of energy at the lowest cost."

– David Boaz, Cato Institute

Don't believe the hype about a carbon tax.

RealClearEnergy (6/22/18) op-ed: "In theory, using Pigouvian carbon taxes is efficient and straightforward, but in practice, the Pigouvian solution is anything but simple. Often ignored by advocates of Pigouvian taxes is what gets referred to as "the knowledge problem." That is, the few individuals in government lack sufficient information from prices and other sources available among the millions of individuals in the market to make sound decisions. A carbon tax is therefore problematic because it forces the decisions of a few on individuals, which may lead to the people and the environment being worse off than without the tax."

Deepwater drilling is back!

Bloomberg (6/21/18) reports: "While U.S. shale production has been

dominating markets, a quiet revolution has been taking place offshore. The combination of new technology and smarter design will end much of the overspending that's made large troves of subsea oil barely profitable to produce, industry executives say. New projects are targeting costs of about $35 to $40 a barrel, which would compete with the lowest-cost shale assets. Cutting costs lets operators tap oil reserves that were previously uneconomic to exploit."

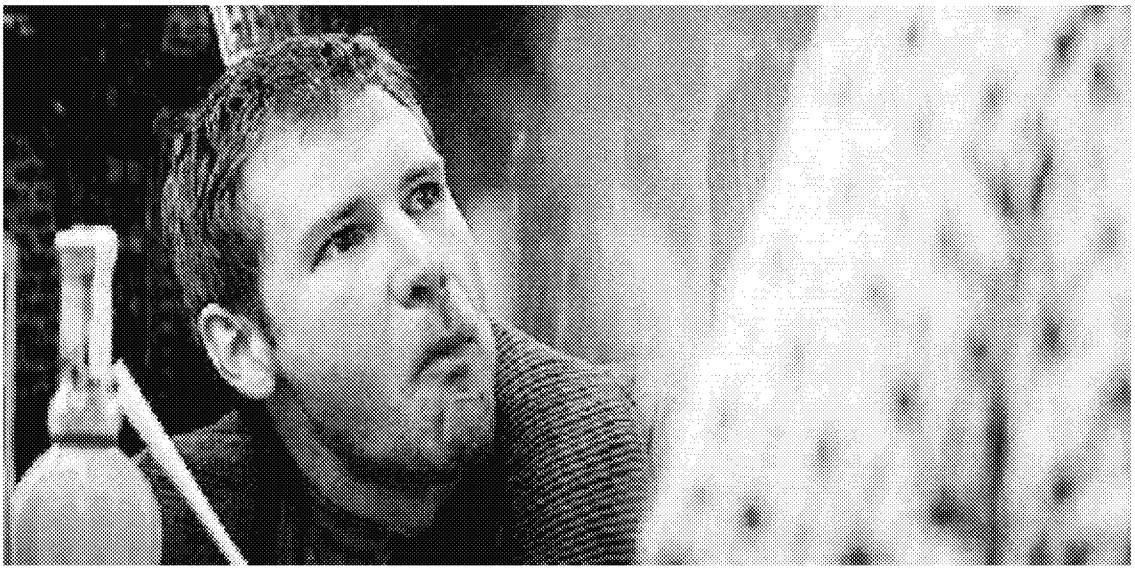
Climate corruption:

The Hill (6/21/18) reports: "The letter states that the foundation has "issued several grants which seek to influence political and social debate rather than conduct scientific research." The senators say that issuing the

grants might violate the Hatch Act, which prohibits federal employees from taking public political stances, as well as NSF's mission, according to NBC News. The federal program, called Climate Central, has been in place for six years and has taught more than 500 meteorologists about global warming, NBC News reported."

(Why) do Californians dream of an electric fleet?

Washington Examiner (6/20/18) reports: "California and eight other states announced a plan Wednesday to promote electric vehicle sales. The plan lists 80 steps that automakers, dealers, utilities, government officials and charging and fueling companies should take between 2018 to 2021 to boost adoption of zero-emission vehicles, mainly electric vehicles but also plug-in hybrid and hydrogen fuel-cell vehicles. The states recommend increasing advertisements, encouraging ride-and-drive events for people to become comfortable with battery-powered cars, and building a reliable network of charging stations in residential, workplace and public charging areas to boost the range of electric vehicles."



U.S. prepares for next wave of LNG exports.

Financial Times (6/21/18): "Rapid demand growth in China and other emerging economies meant 2018 was shaping up to be an exciting year for aspiring US LNG exporters. After three years without a single new plant being given the go-ahead, several companies say they are approaching final investment decisions to build their planned facilities. But the escalating trade dispute between the US and China casts a shadow over those plans. A first wave of US LNG plants has been under construction along the Gulf of Mexico coast. The earliest, Cheniere Energy's Sabine Pass in Louisiana, shipped its first cargo in 2016, and the last

is expected to be completed in 2020. An expected second wave, however, has been on hold."

Steyer is doing a better job of delegitimizing himself.

Energy In Depth (6/21/18) reports: "A growing mountain of evidence points to Tom Steyer as the major force behind the climate litigation effort in California, making it increasingly difficult for Steyer to try to deny his involvement in the campaign. This latest memo and the accompanying donations could create legal headaches for the plaintiffs if a judge determines they were paid by Steyer to bring frivolous lawsuits in service of Steyer's political agenda."

From: Kenny Bruno <kenny.bruno@verizon.net>
Date: Tue, Jan 5, 2016 at 4:42 PM
Subject: Exxon meeting DRAFT Agenda and logistics
To: Lee Wasserman <lwasserman@rffund.org>, Bill McKibben <bill.mckibben@gmail.com>, Jamie Henn <jamie@350.org>, Rob Weissman <rweissman@citizen.org>, Bill Lipton <blipton@workingfamilies.org>, Dan Cantor <dcantor@workingfamilies.org>, John Passacantando <j.passacantando@gmail.com>, Kert Davies <kertmail@gmail.com>, sam@sf.org, SEchanis@berdarlee.com, lkrause@vlcf.org, mp@berdarlee.com, bcampbell@clf.org, Stephen Kretzmann <steve@priceofoil.org>, Carroll Muffett <cmuffett@ciel.org>, Naomi Ages <naomi.ages@greenpeace.org>

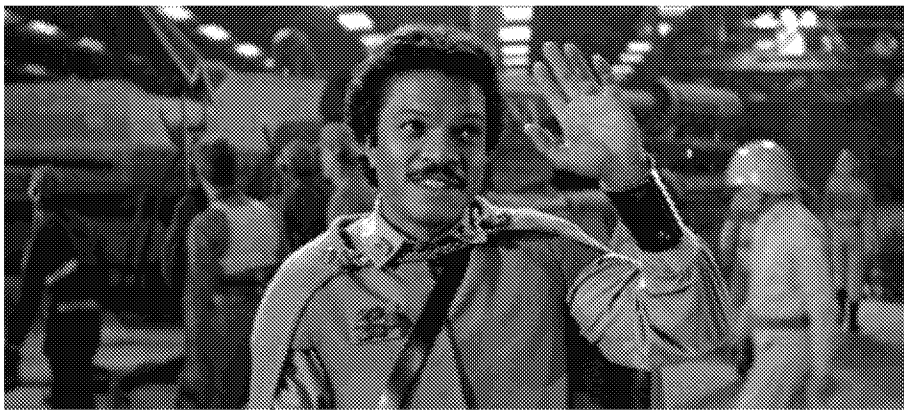
Dear All,
If you are receiving this message then we believe you are attending the meeting this coming Friday Jan 8 regarding Exxon.
The meeting will take place at:
Rockefeller Family Fund
475 Riverside Dr entrance on Claremont @ 120th St. in Upper Manhattan, 1 Train to 116th St. from Penn Station
Please confirm whether you are attending in person (preferred, of course!) or remotely. If remotely see instructions below.
Here is a DRAFT Agenda, your suggestions are welcome.

DRAFT Agenda
Exxon: Revelations & Opportunities
Friday January 8 11 AM – 3 PM
475 Riverside Dr @ 120th ST Manhattan
10:45: Arrival and Coffee
11:00 – 11:15 Introductions and purpose of the meeting (Lee)
11:15-12:00 – Goals of an Exxon campaign
What are our common goals? Examples include:

- To establish in public's mind that Exxon is a corrupt institution that has pushed humanity (and all creation) toward climate chaos and grave harm.
- To delegitimize them as a political actor
- To force officials to disassociate themselves from Exxon, their money, and their historic opposition to climate progress, for example by refusing campaign donations, refusing to take meetings, calling for a price on carbon, etc.
- To call into question climate advantages of fracking, compared to coal.
- To drive divestment from Exxon.
- To drive Exxon & climate into center of 2016 election cycle.

The social cost of environmentalism is energy insecurity.

Daily Caller (6/21/18) reports: "California lawmakers are considering a slate of clean energy bills, but passage could further agitate an energy crisis already brewing in the deep blue state... California's grid issues are largely due to shuttered power plants and a lack of energy storage. Adding to the problem, traditional utilities have been hesitant to sign long-term contracts as alternative energy distributors become increasingly popular among residents — creating uncertainty as to how many customers investor-owned utilities will have."



Everyone is getting in on the cronyism.

Reason (6/21/18) column: "EV manufacturers aren't the only ones pushing for expanding the tax credits. Utility companies hoping to boost demand for electricity also want to keep the handouts flowing. Some argue that utility rates would benefit by better using the underutilized capacity during off-peak hours that must be generated to meet peak load demands, especially during summer months. Making use of currently underutilized capacity would allow fixed capital costs to be recovered over a larger volume of electricity sales and thus at lower prices. However, that would require EV owners to charge their vehicles when utilities want. If owners instead charged when arriving home after work, as they often do, it could instead exacerbate peak demand issues. In either case, the entrance of utilities into the debate over EV handouts is a reminder of how quickly special interests can overwhelm the collective voice of taxpayers and mold the tax code to their benefit. Congress failed to fully utilize the opportunity afforded by last year's tax reform to end the electric vehicle tax credit and other programs that force all taxpayers to subsidize the activities of a tiny few. At a minimum, Congress should avoid compounding that error and resist the call of special interests to expand electric vehicle subsidies."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance

Myron Ebell, Americans for Competitive Enterprise, Competitive Enterprise Institute

Phil Kerpen, American Commitment

William O'Keefe, George C. Marshall Institute

Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity

Joe Bast, Heartland Institute

David Ridenour, National Center for Public Policy Research

Michael Needham, Heritage Action for America

Grover Norquist, Americans for Tax Reform

Sabrina Schaeffer, Independent Women's Forum

George Landrith, Frontiers of Freedom

Thomas A. Schatz, Citizens Against Government Waste

Richard Manning, Americans for Limited Government

Adam Brandon, FreedomWorks

Rich Collins, Positive Growth Alliance

Craig Richardson, E&E Legal

The Honorable George Allen, American Energy Freedom Center

Dick Patten, American Business Defense Council

Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute

Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $66.52

Natural Gas: ↓ $2.95

Gasoline: $2.86

Diesel: $3.17

Heating Oil: ↑ $210.75

Brent Crude Oil: ↑ $74.44

US Rig Count: ↓ 1124

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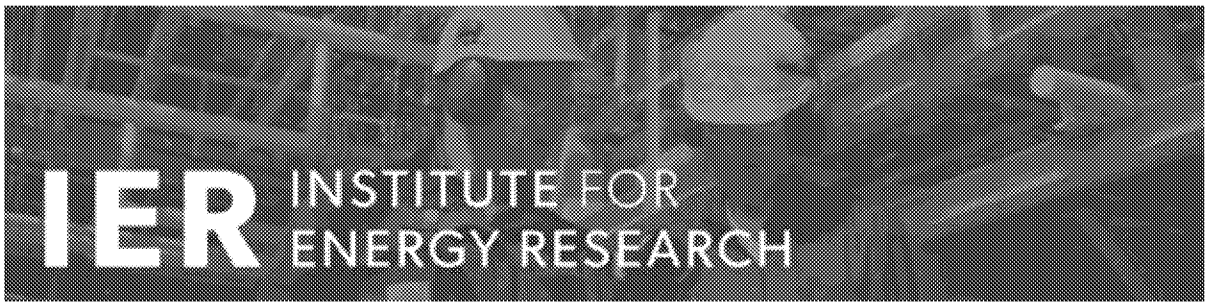

FOR IMMEDIATE RELEASE
May 10, 2018

MEDIA CONTACT: JORDAN McGILLIS
202.621.2947

Transition Team Leaders Ybarra, Ebell, and Pyle to President Trump: Stay the Course on CAFE Reform

WASHINGTON — Today, three Trump transition team leaders — Shirley Ybarra (Department of Transportation), Myron Ebell (Environmental Protection Agency), and Thomas Pyle (Department of Energy) — jointly encourage President Trump to stay the course with the reforms of the Corporate Average Fuel Economy (CAFE) mandate. IER President Thomas Pyle has issued the following statement:

"The CAFE mandate is a vestige of a bygone era of perceived scarcity. American energy production has eliminated the basis for the CAFE mandate and the American public has rejected it through their choices of vehicles. My fellow signatories and I thank the president for taking on the mandate and encourage him to face down California's Democratic political machine. As we have said before, decisions about what kinds of cars people drive should be made consumers, not by bureaucrats making backroom deals."

Read the full text of the letter below:

Dear Mr. President:

As members of your presidential transition team, we write to thank you for the tremendous progress that America has made under your leadership. As a continuation of that progress, we encourage you to stay the course on needed and essential reforms to the federal automobile mandate, more commonly known as the Corporate Average Fuel Economy (CAFE) program.

We understand that some in the automaker community have expressed concerns about your current plans to reform the program. But it is worth noting that early in your presidency, these same automakers urged your administration to "reconsider imposing such a far-reaching mandate on an entire industry" and were greatly concerned that the existing mandate, which you are attempting to reform, "could cause up to 1.1 million Americans to lose jobs due to lost vehicle sales."

Their main concern is the expected legal battle with California. Led by Governor Jerry Brown and Attorney General Xavier Becerra, the state intends to sue your administration over the necessary changes to the existing mandate – a mandate they not only support, but also seek to extend even further through 2030. In fact, what many liberal California politicians really want to do is ban gasoline-powered cars altogether, as evidenced by a bill before the California legislature to ban all gas- and diesel-powered cars by 2040.

You should dismiss this concern. We agree that in an ideal world, California would negotiate with you in good faith, but we all know that is not a reality in this current political climate.

Your efforts to reform this mandate are about cost, consumer choice, and whether or not your administration or the State of California gets to set a national policy.

The existing mandate makes cars more expensive. To meet the mandate, automakers often have to sell smaller, less desirable cars at a discount, while increasing prices on larger, more popular cars, crossovers, SUVs, and trucks. This will get worse over time as the mandate becomes even more severe. In short, because of the mandate, those consumers who prefer trucks, SUVs, or crossovers pay more to subsidize those who buy smaller vehicles.

According to the National Auto Dealers Association, the existing mandates under the mandate would cause the price of an average vehicle to increase by $3,000 in 2025. The Heritage Foundation concluded that repealing the mandate would save car buyers in 2025 at least $7,200 per vehicle.

These significant increases in the average price of a car or truck are a very real regressive tax on American families that make consumers poorer and the economy weaker.

The existing mandate minimizes consumer choice. Consumer demand for the types of cars required under the current California preferred mandate is low, and these cars cost more – in many cases, significantly more – than other vehicles. Because automakers must sell increasing numbers of these cars to consumers nationwide despite the higher costs and low demand, and because fuel economy standards apply not to individual vehicles but to fleets nationwide, the additional costs of these vehicles are borne by all consumers – including consumers in States that choose not to adopt California's regulations.

The existing mandate gives California a disproportionate say. Under the Obama Administration, California was given the ability to set the mandate for the entire nation. The automakers agreed to this because they wanted to avoid having to potentially comply with two different mandates and because they had just been given a hefty bailout by the Obama Administration.

If there is to be one national standard, it makes more sense for that standard to be set by the federal government and not by one state government. But that is what is likely to

happen if you change direction now.

Mr. President, the fundamental question associated with the CAFE is mandate is clear: Who should decide which cars and trucks consumers should buy – consumers and their families, or unelected bureaucrats in Sacramento? The current mandate, which you rightly seek to reform, compels automakers to design vehicles and fleets to meet the preferences of regulators – not consumers.

Thank you again for your leadership on this important issue. We stand ready to help you in all of your efforts.

Sincerely,

Thomas Pyle
Leader of Trump Transition DOE Agency Action Team
President, Institute for Energy Research

Myron Ebell
Leader of Trump Transition EPA Agency Action Team
Director, Center for Energy and Environment
Competitive Enterprise Institute

Shirley Ybarra
Leader of Trump Transition DOT Agency Action Team
Former Virginia Secretary of Transportation

To read more from IER about the CAFE mandate, click here.

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For media inquiries, please contact Jordan McGillis
jmcgillis@ierdc.org
202.621.2947

IER is a 501(c)(3) public foundation that conducts intensive research and analysis on the functions, operations, and government regulation of global energy markets. No financial support is sought or accepted from government sources.

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American Energy Alliance · 1155 15th Street NW, Suite 900 · Washington, DC 20005 · USA

Message

From: Palich, Christian [palich.christian@epa.gov]
Sent: 5/10/2018 1:22:39 PM
To: Woods, Clint [woods.clint@epa.gov]
CC: Frye, Tony (Robert) [frye.robert@epa.gov]
Subject: QFR's
Attachments: 2018.04.19 - FINAL - Administrator Pruitt QFRs EPW 01.30.2018.docx

Importance: High
Flag: Flag for follow up

Sorry for the urgency on this Clint. But I am trying to get these QFR's to the hill asap. Can you look at question 1 on attached Administrators QFR's. I think this question needs updated based on recent events like last week and today, agree?

If so can you get a quick re write of the question with the latest? Thanks!

Christian R. Palich
Deputy Associate Administrator
Office of Congressional & Intergovernmental Affairs
U.S Environmental Protection Agency
O: 202.564.4944
C: 202.306.4656
E: Palich.Christian@epa.gov

Message

From: Maisano, Frank [frank.maisano@bracewell.com]
Sent: 6/11/2018 6:13:35 PM
To: Maisano, Frank [frank.maisano@bracewell.com]
Subject: June 11 PRG Energy Update: Energy for Cup Extravaganza

Friends,

What a sports weekend.... C-A-P-S, Caps, Caps, Caps. As you know, I am a Detroit guy but kudos to my second hometown who won their first Stanley Cup ever on Thursday and it was a thrilling ride for DC. The *WaPo* has the *Day-In-The-Life* and the Caps after-party details with Cup. And the party has continued since... The Parade will be tomorrow morning starting at 11:00 a.m. running up Constitution Avenue between 17th Street and ending at 7th Street. The action then moves to the National Mall.

Then Friday, the Golden State Warriors finished off LeBron James and his Cleveland Cavs for an NBA Finals sweep. On Saturday, *Justify* rolled to the second triple crown in four years leading wire-to-wire in the Belmont Stakes boldly holding off a late run from long-shot *Gronkowski*. While I didn't think he would do it, I was impressed by his run and give a lot of credit to Baffert's move to run stable mate *Restoring Hope*, who ran the first mile on *Justify's* shoulder and prevented the field from pressuring *Justify* like *Good Magic* did in the Preakness. While *Justify* didn't pay out, I was a big fat winner on a trifecta box with *Hofburg* and *Gronk*. Finally, on Sunday, Rafa Nadel again proved he is "King of Clay" winning his 11th French Open Title.

And while the sports were nuts, the Tonys were also awarded in NYC last night and featured some colorful language from Robert DeNiro. The biggest winner was a great play Stacey and I saw earlier this year called *The Band's Visit* with Tony Shalhoub. The musical took home 10 Tonys including Best Musical. And for you Harry Potter fans, the *Cursed Child* won Best Play, among its six awards. All the winners are here.

And looking forward, I know I usually adopt the Champ Kind sports philosophy of "No Soccer," but it is hard to not pay attention to the FIFA World Cup which starts on Thursday with host Russia taking on Saudi Arabia. Here are the teams from Fox, who is televising the event, and a guide from Yahoo! Soccer for those watching. Finally, the US Open launches on Thursday in NY at Shinnecock Hills with World #1 Dustin Johnson at the top pf his game after holing out on 18 at the FedEx St. Jude Classic yesterday.

Between the Caps tomorrow and Thursday's events, I suspect their won't be much work done in DC this week but here we go: The Senate Appropriations Committee marks up its fiscal 2019 Interior-Environment bill this week, the Farm bill emerges in both the House and Senate and all five FERC Commissioners visit Senate Energy tomorrow.

The biggest event this week is Wednesday morning's SAFE forum that releases a new groundbreaking study with original research on the magnitude of impacts from driverless cars at the Jack Morton Auditorium at the George Washington University.

Stacey heads to her annual trek to Delaware's Firefly Festival, the 4-day music celebration at Dover Downs that this year features *Foster The People, Jimmy Eat World, Eminem, The Killers, Portugal The Man*, and many more. Finally, Thursday night at Nationals Park will be an emotional Congressional Baseball game with the return of Steve Scalise after last year's shooting. You can get tickets here.

Call with questions...Best,

Frank Maisano
(202) 828-5864
c. (202) 997-5932

FRANKLY SPOKEN

"As the puck drops, the words that D.C. fans have been waiting to hear since 1974: The Washington Capitals are the 2018 Stanley Cup champions! It's not a dream! It's not a desert mirage, it's Lord Stanley and he is coming to Washington!"

Washington Capitals Radio broadcaster John Walton in the final moments of Game 5 of the Stanley Cup Finals.

ON THE POD

Lobby Shop Hits Recess Cancellation, Caps – Bracewell's latest episode of our podcast, The Lobby Shop, is now live on Stitcher, iTunes, SoundCloud, and Google Play Music. Josh and Liam reunite for a look at the cancellation of Congress's August recess by Senate Majority Leader McConnell, the outlook of the Midterm elections, DC's Capitals in the Stanley Cup Final, and more.

FUN OPINIONS

Murkowski, Faison on CNN: Nuclear Power Important for Rural Communities – In a column on CNN's website, Senate Lisa Murkowski and ClearPath's Jay Faison argued that small reactors could be a huge success for rural communities. They urged policymakers to develop policies that will unleash entrepreneurs to rebuild America's nuclear industry. While efforts to mitigate climate change are heating up, China is rushing to grab the strongest foothold in the clean energy race. China is already constructing and operating advanced reactors while we have none. The US -- once the pioneer and undisputed champion of nuclear power and other breakthroughs -- is falling behind. Murkowski and Faison argue leadership in nuclear technology development allows leadership in nuclear regulation and safeguard regimes. A robust and healthy American nuclear sector is a prerequisite for national security in today's world. S

NEW MIDTERM WEBSITE

Morning Consult Mid-Term Election Tracker in Place – Speaking of midterms, with less than 150 days to go, Morning Consult has introduced *The Midterm Wave Watcher*. It is a new interactive feature showcasing a range of survey research insights related to the 2018 midterm elections. MC interviews registered voters across the country every day to gauge their opinions on their elected officials as well as whom they're planning to vote for in the upcoming 2018 midterm elections for House and Senate. This data, based on hundreds of thousands of surveys conducted in all 50 states, will be released on a monthly basis heading into November. See the full methodology here, and explore the full results here.

IN THE NEWS

Faison Joins DOE Nuclear Advisors – ClearPath Founder Jay Faison was named to the Department of Energy's Nuclear Energy Advisory Committee, which offers advice and recommendations from a range of experts to the assistant secretary for nuclear energy. Energy Secretary Rick Perry has appointed Jay to the Committee through December 2019. NEAC was established in 1998 and provides advice and recommendation on scientific, commercial, technical and programmatic issues relating to DOE's Office of Nuclear Energy. Jay joins NuScale Power Chairman and CEO John Hopkins, Oklo Co-founder and COO Caroline Cochran, Nuclear Industry Council President and CEO David Blee, Nuclear Energy Institute President and CEO Maria Korsnick and others on the committee.

Jay's Take on NuclearVision – Now that he is on the DOE board, Faison outlined a number of opportunities that he will focus on. Faison's new blog out highlights what he calls NuclearVision, including (1) setting aggressive technology goals, in coordination with the private sector, that balance the pace of scientific innovation with commercial needs; (2) proactively encouraging thinking that challenges the status quo and pushes the limit of innovation and (3) empowering technical staff, including program managers that should come from the cutting edge of industry. Following those and other guiding principles could result in proper investments in DOE's research programs, facilitating advanced fuels

development, constructing a versatile fast test reactor by 2026 and competitive cost sharing for our most promising advanced reactor designs.

FirstSolar Launches Ohio Facility – FirstSolar has broken ground on new $400-million, 1-million-square-foot solar plant in Toledo, OH that will triple the company's manufacturing capacity in the U.S. The plant, which is set to reach full capacity in late 2019, will bring 500 jobs to the region, compensating for the 350 jobs First Solar cut to upgrade its Perrysburg Township plant, located less than two miles away, from Series 4 to Series 6 panel production last year. When the new plant is complete, the two factories will produce enough panels to generate a combined 1.8 gigawatts of power annually, three times the Perrysburg site's current output.

More States Granted Delay in WOTUS Case – Late Friday a federal judge granted a preliminary injunction on against the Waters of the U.S. rule to 11 states, including Georgia, Alabama, Florida, Indiana, Kansas, North Carolina, South Carolina, Utah, West Virginia, Wisconsin and Kentucky. Federal Judge Lisa Godbey Wood for U.S. District Court for the Southern District of Georgia ruled that the states have a substantial likelihood of winning at least some of their claims against the 2015 rule. POLITICO reports the judge singled out two of the states' claims as particularly strong: that the Obama rule violated the Clean Water Act with its sweeping coverage of wetlands and streams high up in the tributary network, and that it violated the Administrative Procedures Act by making significant changes between the proposed and final versions of the rule. With this ruling and North Dakota's previous ruling which granted preliminary injunction to 13 states in 2015, the rule is on hold in nearly half the country.

Report Finds Offshore Wind Could Add Jobs – A new report by the American Jobs Project said Maine is well-positioned to capture hundreds of jobs when offshore wind takes off. It says the state should adopt policy positions to improve its opportunities thanks to advances in floating platforms developed by the University of Maine's Advanced Structures and Composites Center. It suggests that Maine could see 2,100 jobs if the state adopts "forward-thinking policies." The report includes recommendations that include restoring an office that fast-tracked wind power projects during the administration of Democratic Gov. John Baldacci. Other recommendations include establishing offshore wind certificate or degree programs to support a skilled workforce and establishing a Northeast Offshore Wind Innovation Center.

Pope Meets with Oil CEOs – Pope Francis urged leaders in the financial, oil and gas industries at a conference at the Vatican to work on transitioning to energy sources that are "highly efficient while producing low levels of pollution," saying that "there is no time to lose." Francis told the group, which included the chairman of Exxon Mobil Corp., the chief executive of the Italian energy giant Eni SPA and the chief executive of BP PLC, that the entire world is affected by climate change, though the poor would "suffer the most from the ravages of global warming."

ON THE SCHEDULE THIS WEEK

A**WWA Holds Annual Conference** – The American Water Works Association Annual Conference and Exposition today through Thursday at the Mandalay Bay in Las Vegas.

Merrifield Headlines Nuclear Export Forum – Several groups are hosting forum in 2322 Rayburn this morning at 11:00 a.m. to discuss the importance of nuclear experts to the U.S. Speakers will include former NRC Commissioner and ClearPath advisor Jeff Merrifield on industry/government collaboration, Westinghouse's Graham Cable on understanding the export market, Nuclear Industry Council CEO David Blee on the export potential for Small Modular Reactors (SMRs) and several more.

Interior Official to Address Energy Policy – The Atlantic Council hosts a conversation on today at Noon with Vincent DeVito, counselor to the secretary for energy policy at Interior. DeVito will focus on the advanced energy aspects of the Trump administration's "energy dominance" agenda.

House Resources Holds MI Field Hearing on Fishery, Bird Controversy – The House Natural Resources Committee holds a field hearing today at 2:00 p.m. that examines the effects of mismanagement of the cormorant in the Great Lakes region at Alpena Community College in Michigan. The boom in population of the cormorant has created controversy regarding its impact on fisheries quality and quantity nationwide. In Michigan, recreational and commercial fishing is an

economically significant industry valued between $4 billion and $7 billion annually. Speakers will discuss including Randall Claramunt of MI DNR and Tom Cooper, who is chief of the U.S. Fish and Wildlife Service's Migratory Bird Program in the Midwest Region.

Wilson to Host Brazilian Biofuels Experts – The Woodrow Wilson Center hosts a forum today at 4:00 p.m. featuring a delegation from the Brazil's Ministry of Mines and Energy, charged with the new biofuels program implementation, and Brazil's National Agency of Oil, Natural Gas and Biofuels (ANP). The group comes to the Wilson Center for a public conversation on RenovaBio. The delegation will be in Washington for meetings with the U.S. government and the private sector to discuss lessons learned from the implementation of the RFS and the LCFS, in order to improve the development and implementation of the new policy in Brazil. RFA's Geoff Cooper and UC-Davis Institute of Transportation Studies Director Dan Sperling will also speak.

Marine Fuel Conference Set – Platts hosts its 15th annual Bunker and Residual Fuel Conference in Houston at the St. Regis Hotel tomorrow and Wednesday. The event features the Latest on Bunker and Marine Fuels, and the Impact of the IMO Low-Sulfur Deadline of 2020 including strategies for ship owners and bunker fuel suppliers, shipping economics in a complex new environment and enforcement challenges and policies.

Hydrogen, Fuel Cell Forum Set for DC – The Fuel Cell and Hydrogen Energy Association will be hosting a full-day forum and showcase tomorrow in Washington, D.C. at the Ronald Reagan Building and International Trade Center with leading executives, experts, and policymakers on fuel cell and hydrogen technology. The forum will bring together key federal and state policymakers, including the Department of Energy and White House, as well as the broader environmental, transportation, and energy communities to raise awareness of the benefits of fuel cell and hydrogen technology. This event will precede the Department of Energy's 2018 Annual Merit Review.

Ethanol Conference Set – The International Fuel Ethanol Workshop and Expo takes place tomorrow and Wednesday at CenturyLink Center in Omaha. The event features programming that maintains a strong focus on commercial-scale ethanol production, new technology, and near-term research and development. Growth Energy's Emily Skor is keynoting.

Playbook to Feature Scalise – On the eve of his return to the Congressional baseball game, POLITICO Playbook holds breakfast interview with House Majority Whip Steve Scalise on Republican priorities and the leadership agenda tomorrow morning at 8:00 a.m.

Sen Energy Hosts FERC Commissioners – The Senate Energy and Natural Resources holds an oversight hearing tomorrow at 10:00 a.m. on FERC. All five FERC Commissioners will testify.

Forum to Look at Buildings of the Future – As a part of High Performance Building Week 2018, there will be a Congressional briefing tomorrow at Noon in 2322 Rayburn seeking recommendation for future buildings. The National Institute of Building Sciences Consultative Council serves a unique role in the building industry, bringing together representatives from leading organizations that represent all aspects of design, construction, operation and regulation to examine important issues before the industry. The forum will look at ways to explore how the building industry can and should evolve to meet the changing needs of society and how new technologies and practices can attract a 21st century workforce. Speakers include Reps. David McKinley and Peter Welch who are Co-Chairs of the High Performance Building Congressional Caucus, as well as our friend Ryan Colker of the National Institute of Building Sciences and several others. On Thursday in 2226 Rayburn, this same group will also hold an expert discussion focusing on how codes and standards play a significant role in supporting strong, practicable and resilient 21st century infrastructure solutions. These solutions include not only incorporating new technologies – such as 3D printing - into codes and standards, but also recognizing the value of hazard mitigation strategies in assuring that infrastructure and buildings are built to withstand future events.

DC Bar Hosts Enforcement Meeting – The D.C. Bar sponsors forum tomorrow at noon on environmental enforcement in the Trump administration. Speakers include Deborah Harris, chief of the Justice Department's environmental crimes section.

USEA Forum to Look at *USE IT* Act – Tomorrow at 1:00 p.m., the U.S. Energy Association hosts a forum on the *USE IT* Act. In March, Sens. Barrasso, Capito, Whitehouse, and Heitkamp introduced the "USE IT" Act, which would support R&D for innovative carbon capture and use technologies. This workshop will explore the environmental and economic opportunities for innovative carbon technologies -- including direct air capture and carbon utilization in building materials and fuels. The conversation will include a discussion of the policy landscape for these solutions, as well as the emerging industry and investment trends in the space. Speakers will include USDA's David Babson, C2ES's Jeffrey Bobeck and Erin Burns of Third Way.

SAFE to Discuss Impact of Self-Driving Technology on Economy, Workforce – On Wednesday at 8:30 a.m., Securing America's Future Energy will hold a forum and release a new groundbreaking study with original research on the magnitude of impacts from driverless cars at the Jack Morton Auditorium at the George Washington University. The study done in collaboration with leading transportation and labor economists focuses on impacts from driverless cars and offers case-study analysis on the economic productivity gains. It will also offer context on the history of network-scale innovations and the short and long-term impacts on the workforce. Speakers include Report author J.D. Vance, former Transportation Secretary Rodney Slater, ep. Debbie Dingell, DOT's Loren Smith ITIF's Rob Atkinson and CBPP's Jared Bernstein, all who are actively crafting AV Policy. For further information, contact Leslie Hayward lhayward@secureenergy.org.

Senate Energy to Look at Hydro Legislation – Senate Water and Power Subcommittee holds a hearing at 10:00 a.m. on Wednesday looking at a hydropower bill and other legislation.

Senate Enviro Looks at Infrastructure – The Senate Environment Committee will hold a hearing on Wednesday at 10:00 a.m. on innovation and America's infrastructure. The hearing will examine the effects of emerging autonomous technologies on America's roads and bridges.

Harvard's Stavins to Speak at Webinar – Harvard hosts a free live webcast with Professor Robert Stavins at 10:00 a.m. Wednesday. During this 45-minute webcast, Professor Stavins will review the past year's development on the economics, policy, and politics of climate change, including ongoing work on the implementation of the Paris Agreement. Stavins will also address the types of policies that countries have put in place and may launch in the future. He will conclude with reflections on the path ahead for the Paris Agreement. Register Here.

Forum to Look at Grid for E-Mobility – At 1:00 p.m. on Wednesday at the National Press Club, the Electric Drive Transportation Association holds a discussion on building the modern Grid for E-Mobility.

Senate Enviro Looks at Crops Water Issues – The Senate Environment Superfund and Waste Management Subcommittee holds a hearing on Wednesday at 2:30 p.m. Army Corps' regulation of surplus water and the role of states' rights.

Drillers to Host Seminar – The International Association of Drilling Contractors hosts its "IADC Onshore and Offshore Drilling Rigs 101" event on Wednesday at 2:30 p.m. IADC members representing both onshore and offshore companies will talk about the latest drilling rig technology and discuss the role of the drilling contractor in the well construction process, along with a presentation of industry safety data.

House Energy Panel to Look at Chemical Facilities – The House Energy & Commerce's Environment Panel hosts a hearing Oat 10:00 a.m. Thursday to get a progress report on the chemical facilities anti-terrorism standards.

Forum to Look at Political; Interference in Climate Data – The Center for American Progress holds a discussion on Thursday at 1:00 p.m. on the large amount of high-quality data and analysis needed to understanding climate change and its potential remedies and responses. Speakers will include former DOE Secretary Ernie Moniz, Rep Paul Tonko and MIT's Bina Venkataraman, among others.

Forum to Look at Boosting Climate Resilience – On Thursday at 3:00 p.m., the Woodrow Wilson Center holds a discussion with representatives from USAID projects in East Africa on how to build resiliency when facing uncertain future scenarios. Panelists will share tools, technologies, good practices and approaches that are applicable and relevant to ongoing and future USAID bilateral and regional programming.

Congressional Baseball Game – Thursday 7:05 p.m.

DOE Science Heads to CSIS for Forum – The CSIS Energy & National Security Program is hosting a discussion with Paul Dabbar, DOE's Under Secretary for Science on Friday at 11:00 a.m. Dabbar will discuss DOE's priorities and the role of innovation in DOE's mission and the U.S. energy sector broadly.

Forum to Look at Spent Fuel in Sweden – The Global America Business Institute will host a discussion on Friday at 12:00 p.m. on the current status of spent fuel management in Sweden. This forum will discuss progress and lessons learned.

IN THE FUTURE

University Coalition Heads to CSIS – On Monday June 18th at 2:30 p.m., the CSIS Energy & National Security Program will host Janet Napolitano (President, University of California), Kristina M. Johnson (Chancellor, The State University of New York) and Timothy Carter (President, Second Nature) for a discussion on the recent launch of the University Climate Change Coalition (UC3), the role of research universities in the development of climate action plans, and their own imperatives for a more sustainable energy system. This spring, UC3 was launched by 13 research university systems in the United States, Canada, and Mexico to mobilize their resources and expertise to inform and facilitate climate solutions in partnership with businesses, local communities, cities, and states. The coalition will utilize its research base and multidisciplinary approaches to craft innovative climate action plans, develop new energy technologies, and advance climate science. UC3 will work in partnership with Second Nature's Climate Leadership Network, a group of hundreds of colleges and universities that have committed to take action on climate change and sustainability actions. Climate Change and the National and Corporate Interest is a high-level speaker series showcasing a variety of country and corporate perspectives on plausible pathways for pursuing a climate change strategy and why those actions are in their national or commercial interest.

REFF Wall Street Forum Set – The Renewable Energy Finance Forum (REFF) New York City will be held next Tuesday and Wednesday in NYC. For 15 years, REFF-Wall Street has brought together the biggest investors and developers to drive investment in the renewable energy sector. This year features a special line-up of dynamic speakers, high-level networking opportunities, and the most active players in the renewable energy industry.

RFF Webinar Set to Discuss Electricity Resilience – Resources for the Future (RFF) hold a webinar next Tuesday at 3:00 p.m. focused on the economics of electricity system resilience. Researchers at Resources for the Future have published previously on decisionmaking on this topic, and on May 30, they co-hosted a workshop with the R Street Institute on economic approaches to identifying and addressing resilience in the bulk power system. This webinar will highlight the timely lessons from that workshop, including definitions of resilience and how it relates to reliability, what's wrong and what's right about existing markets and institutions, the role of consumers, and how to decide what to do next.
A careful analysis suggests that current institutions to support system reliability go a long way toward supporting system resilience—and that real threats to reliable electricity supply and quick recovery from outages may lie in other parts of the system, and therefore call for differently targeted measures.
Register to attend the webinar. Speakers include former AWEA policy chief Robert Gramlich, R Street's Devin Hartman, RFF's Karen Palmer and former DOE official Susan Tierney.

CSIS to Host BNEF Energy Outlook – The CSIS Energy & National Security Program is hosting the launch of Bloomberg New Energy Finance's (BNEF) New Energy Outlook 2018 on Wednesday, June 20th at 10:00 a.m. NEO 2018 is BNEF's annual economic forecast for the world's power sector. Built over nine months, it is the result of international collaboration between 65 market and technical experts from BNEF's 11 offices. For the first time, NEO projects out to 2050, offering 10 more years of data and new insights about the energy transition in the long-term. Seb Henbest (NEO Lead Author and Head of Europe, Middle East & Africa; BNEF) will present the findings of the NEO 2018, followed by

Q&A and discussion led by MIT's Francis O'Sullivan.

GTM to Host Grid Forum – Greentech Media host Grid Edge Innovation Summit on June 20th and 21st in San Francisco. The event is an energy conference that will examine the energy customer of tomorrow and how new innovative business models are quickly emerging. GTM brings together forward thinking and prominent members of the energy ecosystem and as our research team explores the future of the market. Former FERC Chair Jon Wellinghoff will speak along with many others, including our friends Shayle Kann, Julia Pyper and Stephen Lacey.

Duke's Good to Speak at Women Conference – The Center for Strategic and International Studies is hosting a Smart Women, Smart Power conversation with Duke Energy CEO Lynn Good on Thursday, June 21st at 6:00 p.m. She will discuss trends impacting the energy industry, the challenges it faces, and the efforts being made to create a cleaner, smarter energy future. The conversation will be moderated by Fortune's Nina Easton.

NERO to Honor Scalise, Heitkamp – The National Energy Resources Organization will hold its 2018 Awards dinner on Thursday, June 21st at the Capitol Hill Hyatt. Awardees will be Majority Whip Steve Scalise and Sen. Heidi Heitkamp. NERO is a non-partisan organization whose mission is to engage in dialogue on energy issues, recognize outstanding achievements, and promote public awareness.

Chamber to Release Security Index – The U.S. Chamber of Commerce's Global Energy Institute (GEI) hold a forum to release its 2018 International Index of Energy Security Risk on Thursday July 21st at 3:30 p.m. GEI President and CEO Karen Harbert will offer remarks followed by a presentation and panel discussion on international energy security challenges moderated by GEI Vice President Steve Eule. The *Index of U.S. Energy Security Risk: Assessing America's Vulnerabilities in a Global Energy Market* is an annual energy risk indicator, which uses quantifiable data, historical trend information, and government projections to identify the policies and other factors that contribute positively or negatively to U.S. energy security. The Index provides a look at energy security retrospectively from 1970 to 2013 and prospectively from 2014-2040. From this data, policymakers and energy professionals can use the Index to track shifts in U.S. energy security over time and assess potential impacts of new policies.

Forum to Look at Climate Finance – On June 22nd at 10:00 a.m., Brookings hosts a panel of experts will provide an update on innovations in multilateral climate finance. John Roome, senior director for climate change at the World Bank, will discuss innovative approaches for supporting clean infrastructure in developing countries, since too often climate effects hit poor people the hardest. Kruskaia Sierra-Escalante, manager of the International Finance Corporation (IFC)'s Blended Finance Unit, will discuss blended concessional finance for the private sector. Brookings Senior Fellow Joshua Meltzer will discuss his latest research on the topic.

World Gas Conference Features Perry, Industry Leaders – The International Gas Union (IGU) hosts the 27th World Gas Conference (WGC 2018) in Washington DC from June 25-29. The triennial event aims to raise the voice of natural gas while offering timely updates on strategic, commercial and technical issues facing the entire gas value chain and offers the most comprehensive and diverse program to date for the natural gas industry. For the first time ever this includes topics for professionals working in sectors including finance, trading, law, sustainability/renewables, policy/government. Energy Secretary Rick Perry headlines.

Young Professional Program for World Gas Forum Set – The Young Professionals Program (YPP) will hold a special forum during the World Gas Conference June 25-29 in Washington, DC. YPP will provide a great opportunity for promising young professionals in the energy sector to learn from top leaders in the natural gas industry and network with their peers throughout the world. More on this as we get closer.

CSIS Hosts Climate Investments Head – On Tuesday June 26th at 9:00 a.m., the CSIS Energy & National Security Program will host Pratima Rangarajan, CEO of Oil and Gas Climate Initiative (OGCI) Climate Investments, for a conversation on OGCI Climate Investments within the context of the OGCI, why the fund was founded last year, and how and why Climate Investments differentiates itself from other funds. OGCI Climate Investments intends to invest $1 billion over the next ten years to develop and demonstrate innovative technologies which could significantly curb global greenhouse gas emissions.

Mulvaney Headlines Annual CEI Dinner – On Thursday June 28th, the Competitive Enterprise Institute holds its annual dinner and reception at the Marriott Marquis. National Review's Jonah Goldberg will be master of ceremonies and keynoter is OMB chief Mick Mulvaney.

JULY 4th HOLIDAY

Clean Energy Forum on Schedule – The 2018 Congressional Clean Energy Expo and Policy Forum will be held on July 10th and brings together up to 45-55 businesses, trade associations, and government agencies to showcase renewable energy and energy efficiency technologies.

Duke CEO, CARB Chair, Others Headline POLITICO Summit – POLITICO is hosting its second Pro Summit on July 17th at the Renaissance Hotel. The Pro Summit brings together Pro subscribers, expert reporters, key decision-makers, and others who are shaping the policy landscape for a full day of incisive conversations. Summit speakers include Rep. Joe Crowley, Duke CEO Lynn Good, FERC Chair Kevin McIntyre, Amy Myers Jaffe of the Council on Foreign Relations, Coal CEO Bob Murray, California Air Resources Board Chair Mary Nichols and many others. Duke Energy is the main event sponsor.

FRANK MAISANO
Senior Principal
Ext. 5864
Policy Resolution Group

Message

From: American Energy Alliance [info=americanenergyalliance.org@mail5.suw15.mcsv.net]
on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 8/24/2018 2:11:57 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: All about the long game

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In the Pipeline

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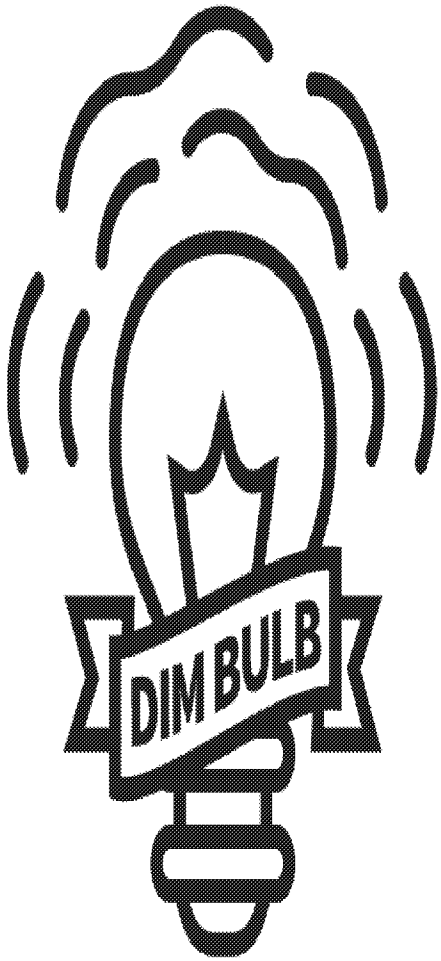
Politico (8/23/18) reports: "Amid Trump's overhaul of Barack Obama's carbon rules for power plants, shredding of the Paris climate agreement and planned rollback of the Waters of the U.S. rule, the administration has quietly embarked on an ambitious effort to soften the rules that form the bedrock of some of the nation's most pivotal environmental protections of the past half century...That effort would represent a sea change that could affect everything from the rules governing power plants and manufacturing operations to the economic development of vast stretches of protected land that house endangered species. 'We've been waiting even in Republican administrations for the types of institutional reforms that have been put forward,' said Tom Pyle, president of American Energy Alliance."



"The idea is to impose a tax on carbon dioxide emissions, starting at $40 per ton and gradually increasing. That would raise the price of a gallon of gasoline by about 38 cents. The tax would foster conservation, make alternative energy sources such as solar and nuclear power more competitive, and give consumers and companies time to adapt without painful disruptions."

– Chicago Tribune Editorial Board

Global hunger crisis or negligible impact on global warming? Take your pick.

Bloomberg (8/19/18) opinion: "A new study suggests, a meaningful carbon tax could trigger food shortages by 2050 for many of the poorest people in the world, and even be worse than climate change continuing completely unabated. In the research paper, published in Nature Climate Change, scientists compared estimates of how either climate change or a strong carbon tax would affect the global population at risk of hunger. The changing climate will directly hit agricultural productivity, while a carbon tax would raise energy prices, a key agricultural input. The study found that a stringent carbon tax would be likely by 2050 to have a greater negative impact on hunger than climate change, with problems worst in vulnerable regions such as sub-Saharan Africa and South Asia."

Must be nice to have glasses that can see 15 years into the future.

The Daily Caller (8/23/18) reports: "Washington Gov. Jay Inslee threatened to sue the Trump administration for rolling back Obama-era regulations on coal

plants, going so far as to label President Donald Trump as an 'unindicted co-conspirator' in air pollution deaths that haven't, and may not, happen... EPA's regulatory analysis showed billions of dollars would be saved, but it also gave a range of public health costs, including premature deaths in 2030 from coal plant pollution...EPA is also looking 15 years into the future, and cannot take into account future innovations or technologies that could reduce premature deaths from air pollution."

Back to school, thanks to the oil boom.

Arizona Daily Star (8/23/18) reports: "A surge in New Mexico's income linked to an oil boom may give legislators an extra $1.2 billion to work with as they craft the next annual budget, state economists announced Wednesday. The windfall comes as New Mexico officials grapple with a court order to shore up funding for public schools to meet basic educational standards and a recent downgrade to the state's credit rating based on mounting public pension liabilities. Economists from three state agencies and the Legislature reported a nearly 15 percent increase in general fund revenues for the fiscal year that ended June 30 — a growth rate the state has not seen in more than a decade."

Glad we cleared that up.

Axios (8/23/18) reports: "In news stories, TV shows and at least one bestselling non-fiction book, you'll see warnings that hackers are coming to take out the U.S. electric grid, plunging the nation into democracy-ending darkness. An attack on that scale was even raised by leading intelligence officials in an Axios deep dive on global security threats. The people tasked with protecting U.S. electrical infrastructure say the scenario where hackers take down the entire grid — the one that's also the plot of the 'Die Hard' movie where Bruce Willis blows up a helicopter by launching a car at it — is not a realistic threat. And focusing on the wrong problem means we're not focusing on the right ones."

***If you oppose a carbon tax, please** contact us and take a stand.*

Tom Pyle, American Energy Alliance

Myron Ebell, Competitive Enterprise Institute

Phil Kerpen, American Commitment

William O'Keefe, George C. Marshall Institute

Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity

Joe Bast, Heartland Institute

David Ridenour, National Center for Public Policy Research

Michael Needham, Heritage Action for America

Grover Norquist, Americans for Tax Reform

Sabrina Schaeffer, Independent Women's Forum

George Landrith, Frontiers of Freedom

Thomas A. Schatz, Citizens Against Government Waste

Richard Manning, Americans for Limited Government

Adam Brandon, FreedomWorks

Rich Collins, Positive Growth Alliance

Craig Richardson, E&E Legal

The Honorable George Allen, American Energy Freedom Center

Dick Patten, American Business Defense Council

Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $68.73
Natural Gas: ↓ $2.96
Gasoline: $2.83
Diesel: $3.14
Heating Oil: ↑ $220.23
Brent Crude Oil: ↑ $75.73
US Rig Count: ↑ 1146

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From: American Energy Alliance [info=americanenergyalliance.org@mail73.atl231.mcsv.net]
on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 6/11/2018 3:04:03 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: That whole G7 thing is a lot less boring these days.

View this email in your browser

MORNING ENERGY NEWS | 6.11.2018

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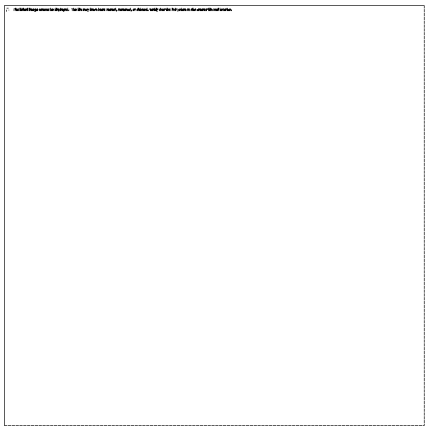
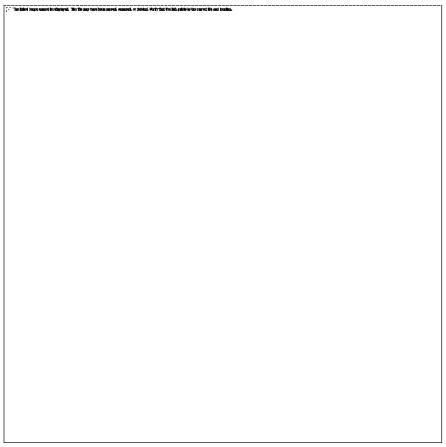
Talk is cheap. Besides, Trump had to catch a plane to catch.

Inside Climate News (6/10/2018) reports: "Trump skipped the G7's formal discussions on the global warming crisis. And in the summit's communique, the United States refused to join in common statements by the other six nations reaffirming their commitment to the Paris climate agreement, which he wants to abandon. Instead, the U.S. unilaterally promoted fossil fuels. And in the end, Trump renounced the whole communique in a Twitter tirade...U.S. negotiators wrote their own paragraph for the climate section that focused on promoting the burning of fossil fuels."





"These lawsuits, pushed by anti-fossil fuel, climate change fearmongers and opportunistic politicians looking for a new, deep-pocketed source of revenue in a time of tight state and local budgets, endanger the very existence of modern, industrial civilization. If the plaintiffs prevail, Americans

will find their freedom to travel and live where they want curtailed by skyrocketing energy costs, and the reliability of their supply of electricity drastically reduced."

– H. Sterling Burnett, Heartland Institute

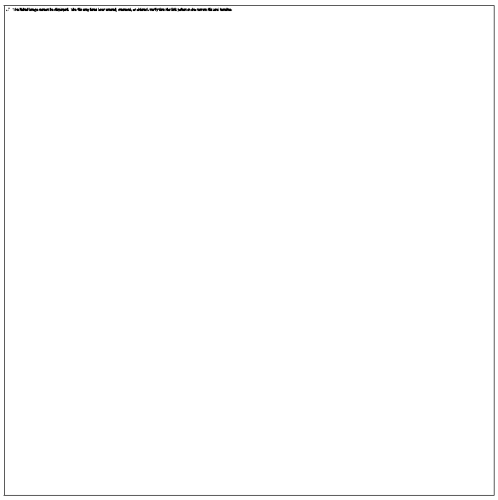
How much CO2 is released in the atmosphere when you burn $556.7 million?

Western Wire (6/7/2018) reports: "The study, authored by Matthew Nisbet, Professor of Communication Studies and Affiliate Professor of Public Policy and Urban Affairs at Northeastern University, analyzed $556.7 million in "behind-the-scenes" grants distributed by 19 major environmental foundations from 2011-2015 in the immediate aftermath of the failure to pass cap-and-trade

legislation in 2010. Nisbet found that more than 80 percent of those funds were devoted to promoting renewable energy, communicating about and limiting climate change and opposing fossil fuels, while only two percent, or $10.5 million, was invested in technologies that would lower carbon emissions like carbon capture storage or nuclear energy. The donations themselves were also very concentrated; more than half of the money disbursed by the philanthropies was directed to 20 organizations in total."

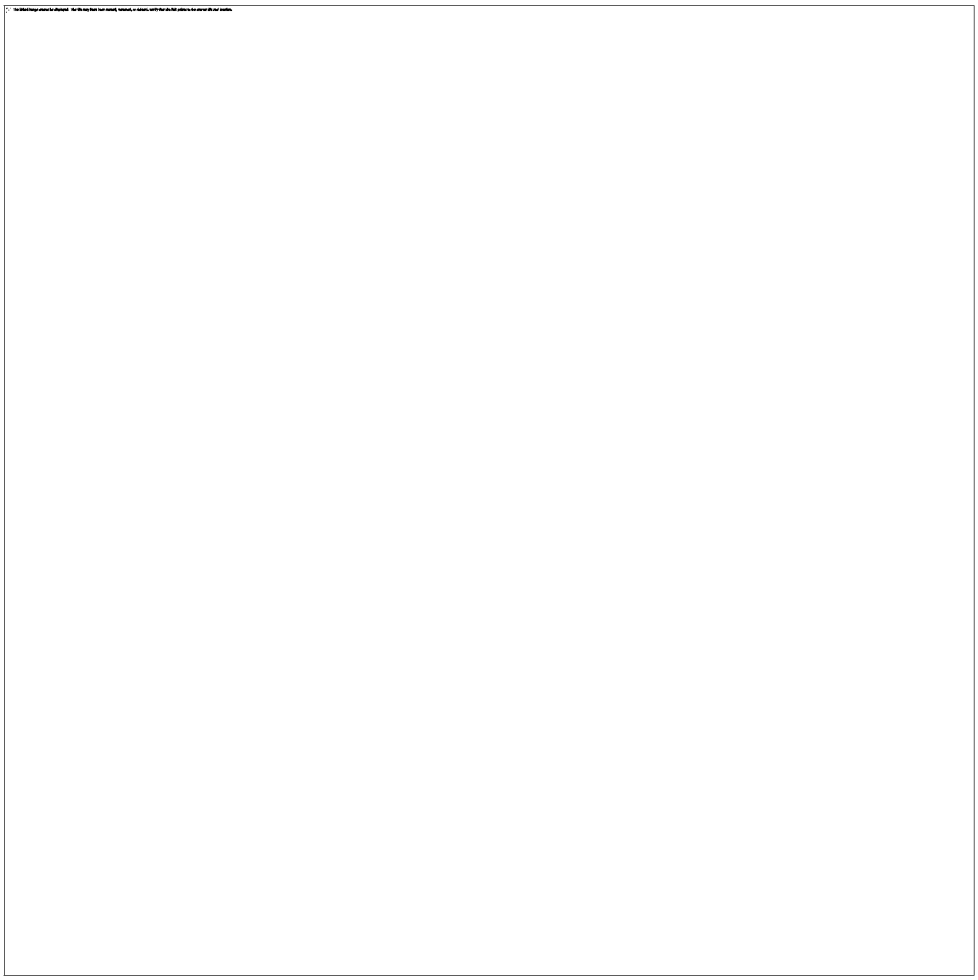
A tree dies in Brooklyn.

New York Daily News (6/7/18) reports: "A celebrity chef with a warped sense of going green poisoned a neighbor's giant silver maple tree because it blocked sunlight from the solar panels on his Windsor Terrace home, the Brooklyn District Attorney's Office says. Adam Harvey, 33, was arrested in May after neighbors spotted him drilling 11 holes into the trunk of the seven-story tree and filling it with herbicide, prosecutors say. The former "Top Chef" contestant, who owns the Gowanus restaurant Bar Salumi, was arraigned on May 15 with two misdemeanors charges: criminal mischief and criminal trespass. A judge also issued an order of protection against the foliage fiend, barring him from going near the tree's owner."



When Tom Steyer loses, we all win.

Washington Free Beacon (6/8/2018) reports: "Power the Future, which earlier this year launched a site highlighting the negative impacts Steyer's activism has had on American towns, is now taking aim at Steyer's failures on the political stage, pointing to the millions of dollars he has spent on failed initiatives."



Toss me a Labatt Blue. Ontario is gonna start winning again. Bigly.

Business Insider (6/8/18) reports: "Business leaders in the Canadian province of Ontario will closely watch new premier-elect Doug Ford for signs the populist conservative can deliver on his pledge to lower the cost of operating in the country's most populous province.The Progressive Conservative Party that Ford leads won the majority of seats in the province's legislature in Thursday's election, data from Elections Ontario showed. The party is seen as business friendly. Ford has vowed to scrap a cap-and-trade program aimed at reducing greenhouse gas emissions, and to cut corporate and personal taxes...Ford promised to "end corporate welfare" and add 30,000 new long-term care beds over 10 years in Ontario, Canada's economic engine and the center of its financial and manufacturing activities. Relatively high power and labor costs have made it difficult to win new investment."

Energy Markets

WTI Crude Oil: ↓ $65.03
Natural Gas: ↑ $2.95
Gasoline: $2.921
Diesel: $3.199
Heating Oil: ↓ $215.08
Brent Crude Oil: ↓ $75.78
US Rig Count: ↑ 1,117

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Message

From: Dolley Madison [fedsoc@fed-soc.ccsend.com]
on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 6/11/2018 2:33:45 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Calls This Week -- June 11, 2018

June 11, 2018

Teleforum Calls This Week

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Executive Overreach at the EPA? The Pebble Mine Clean Water Act Dispute

Environmental Law and Property Rights Practice Group Teleforum

Thursday, June 14th, 2018 | 9:00 a.m. ET

Tom Collier
CEO
Pebble Partnership

Myron Ebell
Director
Center for Energy and Environment
Competitive Enterprise Institute

Robert Perciasepe
President
Center for Climate and Energy Solutions

Moderator:
Shannen W. Coffin
Partner
Steptoe & Johnson LLP

Perhaps in no area was President Obama's expansive approach to executive authority more apparent than in the Environmental Protection Agency's ("EPA") interpretation of the Clean Water Act. Although both critics and supporters of the Obama-era EPA have recognized that many of the Agency's Clean Water Act decisions reflected attempts by the Agency to legislate where Congress had not, some observers have found another pattern: EPA was usurping land use decisions that had traditionally been within the exclusive domain of state and local governments. The Waters of the United States rule expanded federal jurisdiction to cover routine farming activities, and the designation of Wilderness Study Areas has prevented development in areas not otherwise subject to extra environmental regulation. While President Trump and EPA Administrator Scott Pruitt have reversed many Obama-era policies, one important one remains: preemptive vetoes of development permits under Section 404 of the Clean Water Act.

The Clean Water Act provides that the U.S. Army Corps of Engineers ("Corps") is in charge of the Section 404 permit application process, including receiving input from the public as well as state

and local governments, preparing a comprehensive environmental impact statement, and deciding whether to grant a permit application. By contrast, the Clean Water Act provides EPA with narrow authority to veto a Corps-issued permit at the end of the application process. In 2014, however, EPA initiated a veto of the Pebble Mine, a potential copper and gold mine on state-owned lands in southwest Alaska, before the developer submitted a permit application, much less completed the Corps' permit application process. EPA did so over the express wishes of the State of Alaska. Internal EPA documents even suggest that it believed that the preemptive veto aimed at Pebble could be used as a model for future zoning and watershed planning at the federal level.

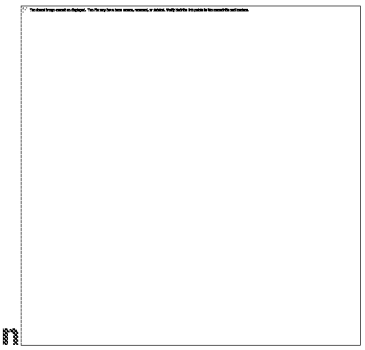
This Teleforum will provide an overview of certain current Clean Water Act developments and jurisprudence, as well as a discussion of the steps EPA has taken to veto the Pebble Mine, a proposed veto that remains pending. In particular, the teleforum will focus on the effects that EPA's expansive authority has on state and local governments' ability to manage public lands.

Balancing Executive and Legislative Branch Interests in Congressional Oversight

Administrative Law & Regulation Practice Group and Article I Initiative

Friday, June 15th, 2018 | 1:00 PM ET

Morton Rosenberg
Fellow
The Constitution Project
Project on Government Oversight



Hon. William Moschella
Shareholder
Brownstein Hyatt Farber Schrek

Moderator: Hon. Eileen J. O'Conner
Law Office of Eileen J. O'Conner PLLC

One might expect that by now the Legislative and Executive Branches would have worked out some understood and accepted protocols for balancing the interests of the Legislative Branch in satisfying its oversight obligations, and of the Executive Branch in enforcing the laws (and investigating their possible violation) without disruptive interference. However, year after year, Congress seeks information the Executive refuses to provide. During the last Administration, Congress seemed powerless to enforce its determination to get to the bottom of DOJ's Fast & Furious, IRS's Tea Party

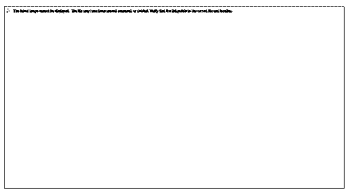
targeting, and other apparent agency scandals. Now, some suppose that it is the Department of Justice's ongoing investigation into the last Administration's conduct during the 2016 election season that is preventing it from providing, at least for now, all the information Congress requests on that subject. News reports of this conflict between two co-equal branches of government saturate newspapers, the airwaves, and the internet. Most focus on Congress's right to and need for the information, without acknowledging legitimate reasons the Administration might have for withholding it or delaying its production.

This Teleforum will offer a balanced representation of the competing interests. Morton Rosenberg, retired Congressional Research Service Senior Legal Analyst and author of *When Congress Comes Calling: A Study on the Principles, Practices, and Pragmatics of Legislative Inquiry*, will explain the history of and authority for Congressional demands for information from Executive Branch agencies. Washington attorney William Moschella, a former Congressional Staff Counsel who later became President George W. Bush's Assistant Attorney General for the Office of Legislative Affairs - the office responsible for DOJ's responses to Congressional inquiries - will offer insight into the considerations accompanying such responses.

Previously Recorded Calls

Courthouse Steps: *Masterpiece Cakeshop v. Colorado CRC Decided*

Religious Liberties Practice Group Teleforum



Masterpiece Cakeshop v. Colorado CRC, one of the most highly publicized of the term, was decided 7-2 in favor of the petitioner.

The facts of the case are as follows: two men, Charlie Craig and David Mullins, were planning their wedding and sought a wedding cake from Jack Phillips, the owner of Masterpiece Cakeshop. Phillips told the men that he could not make them a cake, citing his religious beliefs. The Colorado Civil Rights Commission determined that Phillips was discriminating against the couple on the basis of sexual orientation. Phillips was told to "cease and desist" such discrimination and was ordered to provide "remedial measures." As a result, Phillips stopped offering custom cakes entirely.

The case deals with the balance of religious liberties and equality through anti-discriminatory laws. It also involves the Free Speech Clause, as Phillips considers his custom cakes art and himself an

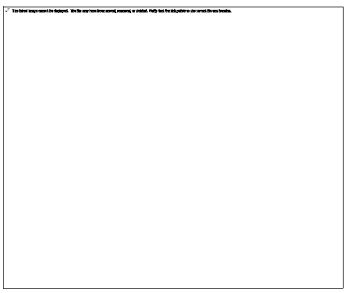
artist. Phillips and many others see the "cease and desist" as a form of compelled speech, since he would be legally obligated to create art with a message he does not support.

Dale Carpenter, Judge William Hawley Atwell Chair of Constitutional Law at the SMU Dedman School of Law and Kim Colby, Director at the Center for Law & Religious Freedom, Christian Legal Society, joined us to discuss this important decision.

[Listen]

Supply Chain: The Role of Chinese Equipment in U.S. Tech

International & National Security Law and Telecommunications & Electronic Media Practice Group Teleforum

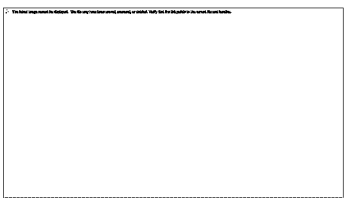


"Supply chain security" has been a hot topic in Congress and federal agencies in recent months. There is concern among policymakers that the use of Chinese telecommunications equipment in U.S. networks and connected devices could pose security risks. Clete Johnson (Wilkinson Barker Knauer), Nova Daly (Wiley Rein), and Sarah Geffroy (AT&T) join us to share their thoughts on these concerns. They also discuss the general role of Chinese equipment in the U.S. technology sector and the effect of banning sales to the U.S. public sector of such equipment on the U.S. and global economies.

[Listen]

Courthouse Steps: *Collins v. Virginia*

Criminal Law & Procedure Practice Group Teleforum



In *Collins v. Virginia*, police searched a motorcycle which was partially hidden under a tarp outside a private residence. The police believed the motorcycle was the same one they had seen earlier committing traffic violations, and had been reported stolen. Later it was found out that the

motorcycle was indeed stolen and the owner, who lived in the private residence, had known the vehicle was stolen before purchase. At trial, the owner tried to suppress the motorcycle as evidence because the police officers had not obtained a warrant before searching under the tarp. Under the Fourth Amendment automobile exception, is a police officer permitted to enter private property without a warrant in order to search a vehicle near the house?

On May 29th, 2018, the Supreme Court decided 8-1 that such a search was not permitted under the Fourth Amendment. Greg Brower joins us to discuss the decision and its implications.

[Listen]

Speak Freely: Why Universities Must Defend Free Speech

Free Speech & Election Law Practice Group and the Faculty Division Teleforum

In *Speak Freely*, Prof. Whitting ton argues that universities have a distinctive and important mission in American society. They assemble and nurture an open and diverse community of scholars, teachers and students dedicated to the production and dissemination of knowledge. The robust protection of free speech and civil discourse is essential to that mission. Better understanding the relationship between the critical functions of the university and the principles of free speech can help guide us in resolving the difficult challenges that confront the members of modern universities.

Join us for a Teleforum discussion of Prof. Whittington's book with Prof. Frederick Schauer, moderated by the Federalist Society's Faculty Division Deputy Director Anthony Deardurff.

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Message

From: Dominguez, Alexander [dominguez.alexander@epa.gov]
Sent: 4/13/2018 3:41:34 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Academics List Revised
Attachments: Academics.xlsx

Attached is the revised list of academics – omitting any that were on Stephen's list. Just a few gaps of information I could not find, and one email address at the very bottom I can find no person to attach to.

From: Dominguez, Alexander
Sent: Wednesday, April 11, 2018 4:22 PM
To: Woods, Clint <woods.Clint@epa.gov>
Subject: Academics

Attached is the excel doc with a list of academics.

Alex Dominguez
Policy Analyst to the Principal Deputy
Office of Air and Radiation
U.S. Environmental Protection Agency

Academic Contacts

First Name	Last Name	Email Address
Jerome	Arnett	Personal Email / Ex. 6
Robert	Bailey	
Dallas	Baker	
Keith	Belton	
Richard	Belzer	
Alex	Berezow	
Daniel	Botkin	
William	Briggs	
Dan	Byers	
Edward	Calabrese	
Mark	Campbell	
Alan	Carlin	
Oren	Cass	
Bruce	Copley	

Highest Degree Earned	Occupation	Link
M.D.		
	Correspondent, Reason	Bio
MBA, Mississippi College	Director of Environmental Services, Neel-Schaffer	Linkedin
Ph.D., (public policy) George Washington University	Director, Manufacturing Policy Initiative	Bio
Ph.D., Harvard University	President, Regulatory Checkbook; Independent Consulting in Regulatory Policy, Economics, and Risk Analysis	House Science Committee 2017 Testimony
Ph.D., (microbiology) University of Washington		Bio
Ph.D., (plant ecology) Rutgers University	Professor Emeritus in the Department of Ecology, Evolution, and Marine Biology at the University of California, Santa Barbara	Bio
Ph.D., (statistics) Cornell University	Policy Advisor, Heartland Institute	CV
M.S., (soil science) North Carolina State University	Senior Policy Director, U.S. Chamber og Commerce;s Global Energy Institute	Bio
Ph.D. (physiology.toxicology), University of Massachusetts at Amherst, MA	Professor, University of Massachusetts at Amherst, MA	CV
Ph.D., Johns Hopkins University	Professor, U.S. Naval Academy	USNA Directory
Ph.D., (economics) Massachusetts Institute of Technology		Bio
J.D., Harvard Law School	Senior Fellow, Manhattan Institute	Bio
	ExxonnMobil Biomedical Sciences	

Column1

Tony	Cox
Judith	Curry
Susan	Dudley
Don	Easterbrook
Peter	Felker
Barb	Glenn
Teresa	Gorman
Laurence	Gould
John	Graham
William	Happer
Michael	Honeycutt
Walt	Hufford
Jason	Johnston
Jonathan	Lesser
Richard	Lindzen
Fred	Lipfert

Personal Email / Ex. 6

Ph.D., (risk analysis) Massachusetts Institute of Technology	President, Cox Associates	CV
Ph.D., (geophysical sciences) University of Chicago	President, Climate Forecast Applications Network	CV
M.S. Massachusetts Institute of Technology	Director, GW Regulatory Studies Center & Distinguished Professor of Practice Trachtenberg School of Public Policy & Public Administration	Directory
Ph.D	Professor Emeritus of Geology at Western Washington University.	
Ph.D. (chemical physics), California Institute of Technology	Professor, University of California, Los Angeles	
Ph.D., (ruminant nutrition) University of Kentucky	CEO, NASDA	Bio
Ph.D., (physics) Temple University	Professor, University of Hartdford	Bio
Ph.D., (urban and public affairs) Carnegie-Mellon University	Dean, Indeana University School of Public and Environmental Affairs	Bio
Ph.D., (physics) Princeton University	Professor Emeritus, Princeton University	Bio
	Director, Toxicology Division, TCEQ	
	Director of Government and Regulatory Affairs, Repsol USA	Bio
Ph.D (economics), University of Michigan	Professor, University of Virginia School of Law	UVA Directory
Ph.D., (economics) University of Washington	President, Continental Economics	CV
Ph.D., (applied mathematics) Harvard university	Professor Emeritus, Massachusetts Institute of Technology	Bio
	Environmental Consultant	

Randall	Lutter
Matthew	Malkan
Gary	Marchant
Roger	McClellan
Mike	McKenna
Henry	Miller
Alan	Moghissi
Suresh	Moolgavka
Kevin	Neyland
Steve	Packham
Theresa	Pugh
David	Schoenbroc
Roger	Stough
Stanley	Trimble
Richard	Trzupek
Kirby	Tyndall
George	Wolff

Personal Email / Ex. 6

Ph.D. (economics), Cornell University	Professor of Public Policy, University of Virginia	CV
Ph.D (astronomy), Caltech	Professor, University of California, Los Angeles	UCLA Directory
J.D., Harvard Law School	Professor of Law, Arizona State University	Bio
DVM, Washington State University	Advisor, Inhilation Toxicology & Human Health Risk Analysis	CV
MPA., George Mason University	President, MWR Strategies	Bio
M.D., University of California, San Diego	Fellow, Hoover Institution at Standford university	Bio
Ph.D., (physical chemistry) Karlsruhe Institute of Technology	Associate Director of International Center for Regulatory Science at George Mason University	Bio
Ph.D., (mathematics) Johns Hopkins University	Senior Fellow & Principal Scientist, Exponent	Bio
Ph.D., (medical psychology) University of Oregon medical School	Toxicologist, Utah Department of Environmental Quality	Directory
BA, (political science/history) Trinity University	Consultant	CV
LL.B., Yale University	Trustee Professor of Law, New York Law School	Bio
Ph.D., (geography and environmental engineering) Johns Hopkins University	Professor, George Mason University	Bio
Ph.D. (population and settlement geography), University of Georgia	Professor Emeritus, University of California, Los Angeles	UCLA Directory
	Principal Consultant, Trinity Consultants	
Ph.D	Senior Consulting Toxicologist, Pastor Behling & Wheeler	
Ph.D., (environmental sciences) Rutgers University	Principal Scientist, Air Improvement Resource, Inc.	Bio

S. Stanley	Young
David	Zorn
Benjamin	Zycher

Personal Email / Ex. 6

Ph.D., (statistics and genetics), North Carolina State University	Fellow, American Statistical Association and the American Association for the Advancement of Science	
Ph.D. (economics), George Mason University	Adjunct Professor, George Mason University	Linkedin
Ph.D. (economics), University of California, Los Angeles	Senior Fellow, Pacific Research Institute; President of Benjamin Zycher Economics Associates; Resident Scholar. American Enterprise Institute	Bio

GMU
Directory

Message

From: Dolley Madison [fedsoc@fed-soc.ccsend.com]
on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 4/12/2018 3:49:34 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Starting Now: Citizenship and the Census

The Federalist Society

April 12, 2018

Our Call is Beginning NOW

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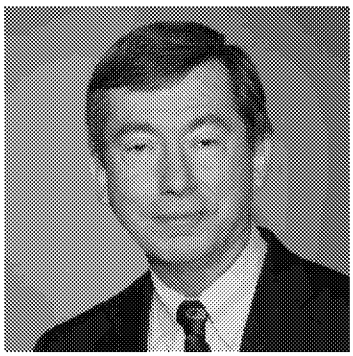
Citizenship and the Census

Litigation Practice Group Teleforum

Thursday, April 12th, 2018 | 12:00 p.m. Noon ET



Dr. John S. Baker Jr.
Visiting Professor
Georgetown University
School of Law

On March 26, the Commerce Department announced that the 2020 census will include a question about U.S. citizenship. The Commerce Department was acting in response to a December request from the Justice Department to include the question for the stated purpose of better enforcement of the 1965 Voting Rights Act. 17 state attorneys general and 7 cities filed a lawsuit on April 3 against the federal government claiming that the citizenship question would depress the number of responses from noncitizens, therefore unconstitutionally decreasing the population count used to determine representation in Congress for states with high non-citizen populations. Dr. John S. Baker, Jr. Visiting Professor of Georgetown Law will join us to discuss recent developments.

Dial 888-752-3232 to Participate

Speaker Biographies

John S. Baker

Dr. John Baker is a Visiting Professor at Georgetown Law School and at Peking University School of Transnational Law. He has been a Visiting Fellow at Oriel College, the University of Oxford (2012-2014). He is Professor Emeritus of Law, and previously the Dale E. Bennett Professor of Law, at Louisiana State University Law School. He was an adjunct Fellow at the Heritage Foundation (Spring, 2008) and a Distinguished Scholar at the Catholic University of America Law School (2011-12). He has also taught at Tulane Law School, George Mason Law School, Pepperdine Law School, New York Law School, Hong Kong University, and the

University of Dallas, School of Management. He has been a Visiting Professor at the University of Lyon III (France) (1999-2011) and at the Universidad de los Andes, Chile, where he was a Fulbright Specialist in 2012. He has lectured at universities and research institutes in Argentina, Austria, Brazil, China, Croatia, Peru, Slovenia, Taiwan, Vietnam, and the Philippines, where he was a Fulbright Fellow (2006).

Dr. Baker received his J.D., with honors, from the University of Michigan Law School and his B.A., magna cum laude, from the University of Dallas. He also earned a Ph.D. in Political Thought from the University of London.

Dr. Baker has taught over a dozen different subjects, mostly in the area of public law. His main areas of interest are Constitutional Law (particularly federalism and separation of powers), Criminal Law, Anti-Terrorism Law, International Law, Health Care Law, Mediation, and Comparative Law.

In addition to law review articles and book chapters, Dr. Baker's academic publications include: *Hall's Criminal Law: Cases and Materials* (with Benson, Force and George; 5th ed. Michie, 1993); *An Introduction to the Law of the United States* (ed. with Levasseur; University Press of America, 1992). He has also published on Forbes.com, FoxNews.com, in *The Washington Times*, and a number of times in the *Wall Street Journal*.

He argues in federal court, including two oral arguments in the U.S. Supreme Court. For years, he taught courses for the Federalist Society on separation of powers with the late Supreme Court Justice Antonin Scalia. In September, 2016, he taught a Supreme Court seminar in China with Justice Samuel Alito.

Following law school, he served as a law clerk in federal district court and as an assistant district attorney in New Orleans before joining LSU in 1975. While a professor, he has been as a consultant to USAID, USIA (now part of the State Department), the Justice Department, the U.S. Senate Judiciary Subcommittee on Separation of Powers, and the Office of Planning in the White House. He served on an ABA Task Force which issued the report, The Federalization of Crime (1998) and later as a consultant to the "Bi-Partisan Task Force on the Over-federalization of Crime" (2012-2014) created by the U.S. House Judiciary Subcommittee on Crime..

Dr. Baker was a co-founder of the first iteration (1995) of Stratfor Inc., a global intelligence agency. He co-authored its first book: *The Intelligence Edge* (with Friedman, Friedman and Chapman; Crown Books/Random House 1997).

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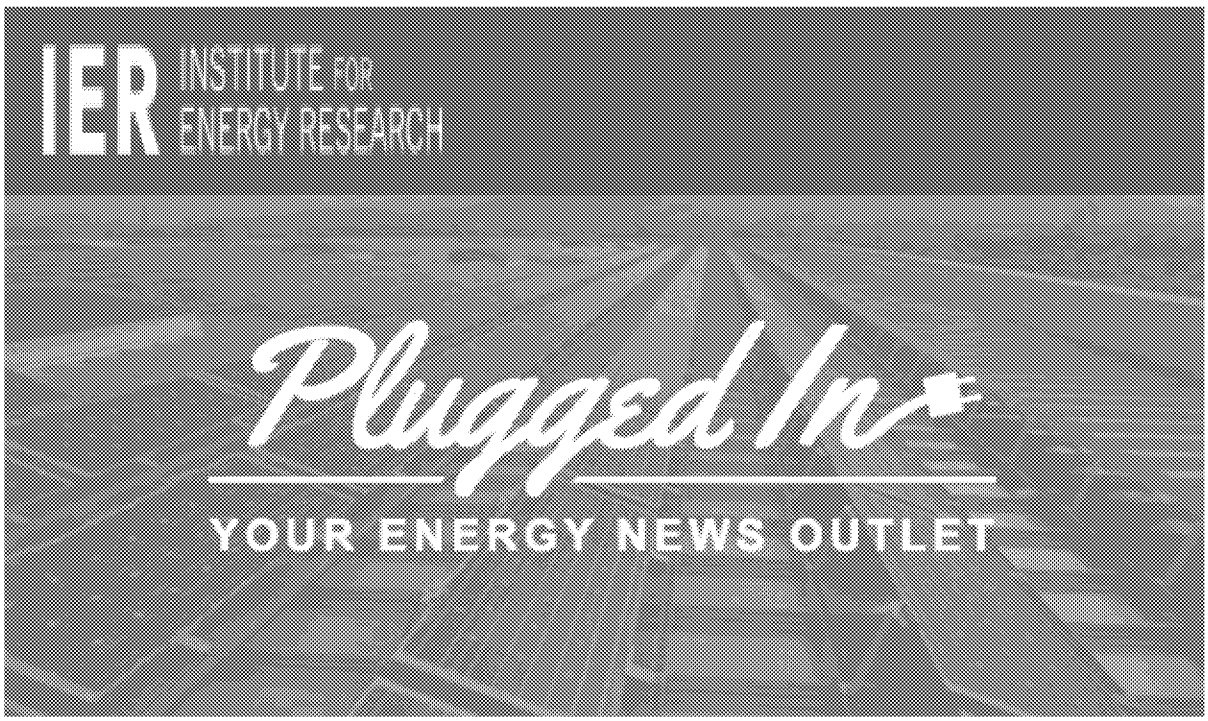
To: Woods, Clint [woods.clint@epa.gov]
Subject: Taking on the Carbon Tax Schemes



SURGING

President Trump followed through on a campaign promise this week by proposing a rule to reform the Obama-era Clean Power Plan.

IER President Thomas J. Pyle commented:

"The Clean Power Plan was never about clean power. The nation's electricity

generation fleet is already very clean and getting cleaner — as shown by the nearly 70-percent reduction in criteria pollutants since 1970. The real purpose of the CPP was to shift the economy away from affordable and reliable electricity sources and towards wind and solar – a back door federal renewable mandate – consistent with the previous administration's climate ideology. We are pleased to see the Trump Administration following through on his campaign promise by tackling the CPP. While this rule falls short of full repeal, it is certainly a good first step."

Read IER's full statement and check out more of IER's past work on the subject on our website.

From The Studio

Dr. Robert Murphy on Carbon Tax Schemes

CARBON TAXES

Alex and Jordan sit down with IER's Senior Economist, Dr. Robert Murphy, to discuss the impact carbon taxes have had where implemented and the serious problems one could cause if adopted in America. Don't miss episode #3 of the '*Plugged in*' podcast: Dr. Robert Murphy on Carbon Taxes.

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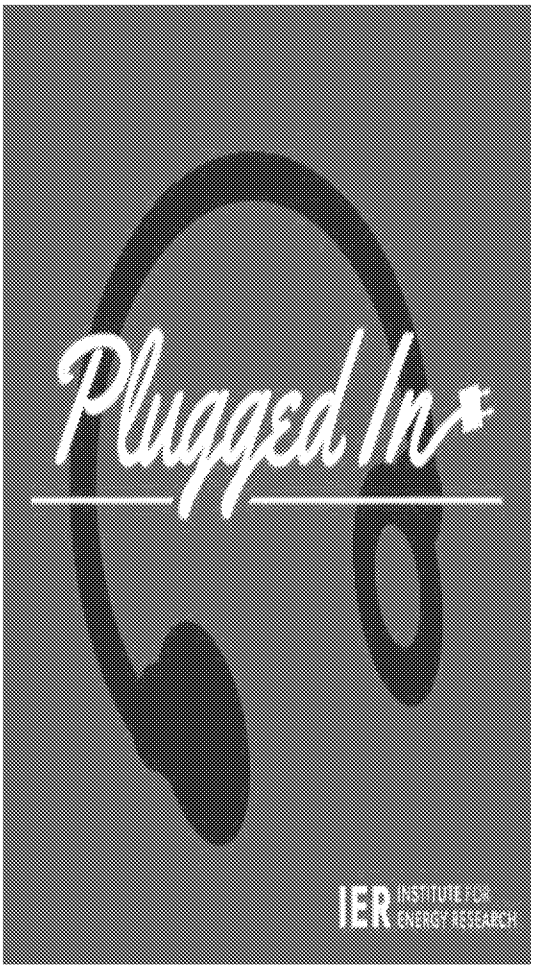

Latest Analysis

- Germany's Dependence on Fossil Fuels and Russian Gas
- False Consensus: *The Onion* Spoofs Climate Science
- Ocean City Officials Strengthen Their Opposition to Proposed Wind Farms

THE WIRE

IER News Highlights

- IER's "invaluable" research touted by Stephen Moore in The Washington Times
- Policy Analyst, Jordan McGillis, quoted by The Heartland Institute

THE BUZZ

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THE BREAKER

"The Clean Power Plan is headed for the crematorium. Good riddance." – National Review Editorial Board

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on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 7/27/2018 2:27:24 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Sneaking sips in Santa Barbara.

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In the Pipeline

MORNING ENERGY NEWS | 7.27.2018

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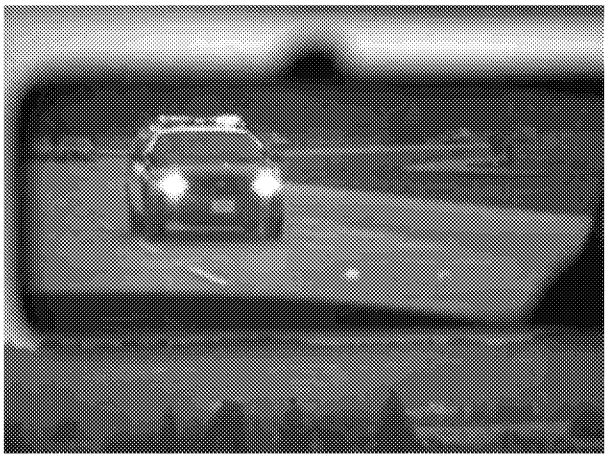
Yes, you read that right.

San Francisco Chronicle (7/25/18) reports: "As bans on plastic straws are cropping up in municipalities up and down the West Coast, Santa Barbara has escalated things with a ban that includes the possibility of jail time for repeat plastic straw-distributing offenders. The Santa Barbara ordinance makes it illegal for businesses to hand out plastic straws, and they're also forbidden from handing out plastic cutlery without first confirming the customer wants it."



"The US is nowhere near overtaxed and we have lots of big spending needs if we're going to address climate change (like, say, a Green New Deal)."

– David Roberts, *Vox*

But onward to repeal.

The Daily Caller (7/26/18) reports: "The Environmental Protection Agency (EPA) withdrew a 'no action assurance' notice that delayed enforcement of an Obama admnistration-era regulation the agency is working to repeal, The Daily Caller News Foundation has learned. Acting Administrator Andrew Wheeler decided current regulations limiting the sale of glider kits — refurbished truck engines placed into new bodies — did not warrant a delay in enforcement, according to a source familiar with the matter."

First stop: Cove Point. Next stop: the world.

Washington Examiner (7/26/18) reports: "Energy Secretary Rick Perry on Thursday christened the first natural gas export terminal on the East Coast, at the Cove Point facility in Maryland outside of Washington. 'We can become a reliable competitive alternative anywhere in the world, and we will,' Perry said...Cove Point is the second LNG export facility to open in the country after the large Sabine Pass terminal in Louisiana. Perry said four more facilities are nearing completion to begin shipping natural gas in the near future."

Market innovation makes old problems obsolete.

Houston Chronicle (7/26/18) reports: "As Congress steadily sells off the oil contained within the Strategic Petroleum Reserve - residing 1,000 feet beneath the surface of coastal Texas and Louisiana - Democrats and Republicans are now exploring a concept that would have been inconceivable a decade ago: Allowing others to store oil in unused sections of the reserve...But with an oil shale boom on and the United States far less dependent on foreign crude that it was just a decade ago, lawmakers and economists at-large have debated the necessity of maintaining a reserve that is now nearing the end of its intended life."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance
Myron Ebell, Competitive Enterprise Institute

Phil Kerpen, American Commitment
William O'Keefe, George C. Marshall Institute
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Joe Bast, Heartland Institute
David Ridenour, National Center for Public Policy Research
Michael Needham, Heritage Action for America
Grover Norquist, Americans for Tax Reform
Sabrina Schaeffer, Independent Women's Forum
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Rich Collins, Positive Growth Alliance
Craig Richardson, E&E Legal
The Honorable George Allen, American Energy Freedom Center
Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↓ $69.47

Natural Gas: ↓ $2.78

Gasoline: $2.85

Diesel: $3.15

Heating Oil: ↓ $217.53

Brent Crude Oil: ↓ $74.50

US Rig Count: ↑ 1139

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Subject: New at The Federalist Society

2018 Texas Chapters Conference, Job Opportunities, Supreme Court Round Up, New Blog Posts

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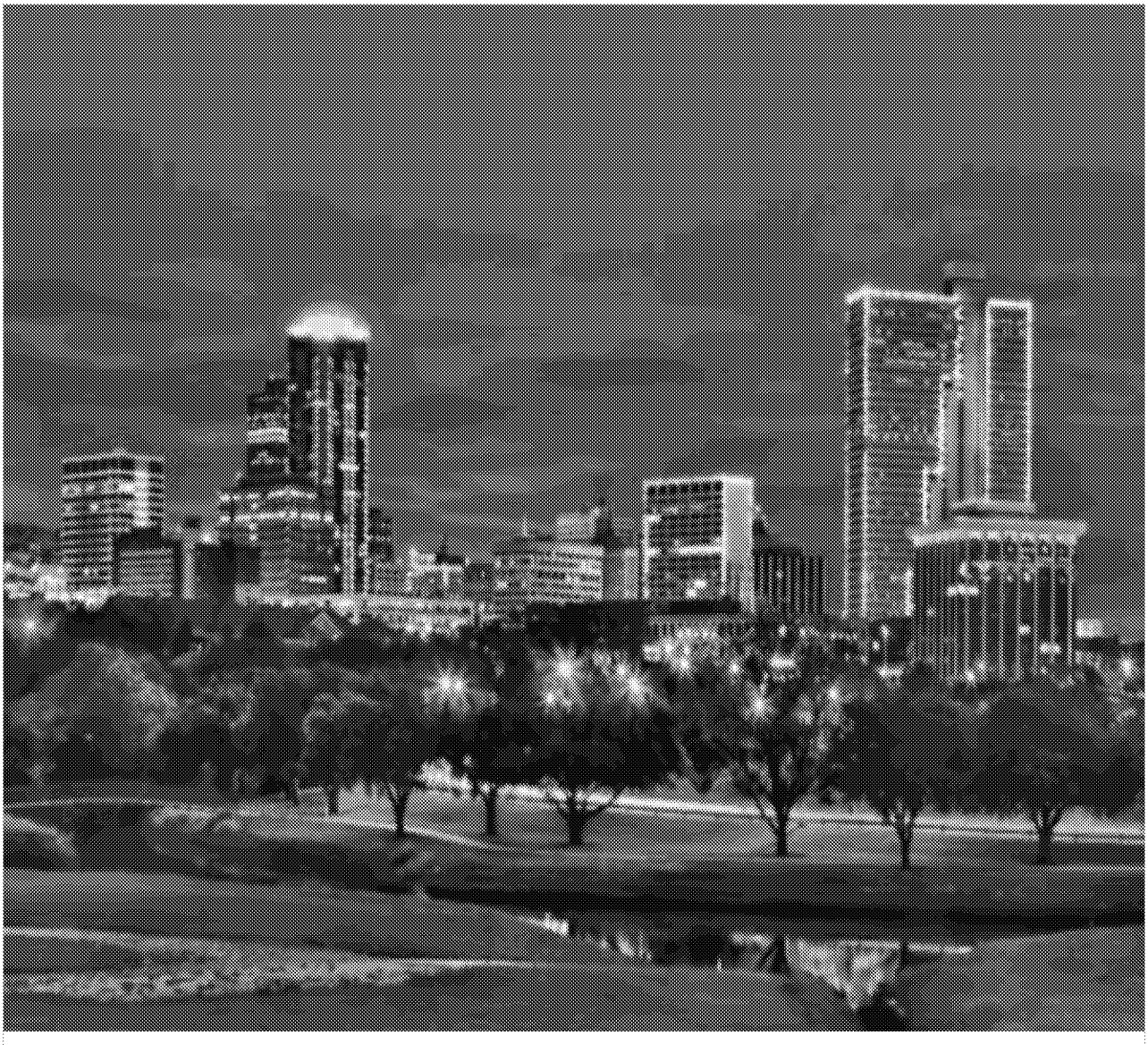
July 27, 2018



2018 Texas Chapters Conference

September 7-8, 2018 | Fort Worth, TX
Register today for the 2018 Texas Chapters Conference. The program will include the inaugural Gregory S. Coleman Memorial Lecture to honor the life, memory, and legacy of Texas' first Solicitor General. Associate Justice Clarence Thomas, Supreme Court of the United States, will serve as this year's lecturer.
[Register]

Upcoming Events Across the Country

Our website contains a detailed list of events. [Find an event] #FedSocEvents

Chapter	*Topic & Speakers*	*Date & Time*
Alaska Lawyers Chapter	What I Know About Judge Kavanaugh • **Justin Walker,** Professor of Law, University of Louisville	July 30 6:30 p.m.
Madison Lawyers Chapter	The Judge Kavanaugh I Know • **Rebecca Taibleson,** Assistant U.S. Attorney, U.S. Attorney's Office • **Ryan Walsh,** Chief Deputy Solicitor General, Wisconsin Department of Justice	August 3 11:30 a.m.
Evansville Lawyers Chapter	The Liberal Echo Chamber on American Campuses • **Luke Milligan,** Professor, University of Louisville School of Law	August 3 12:00 p.m.

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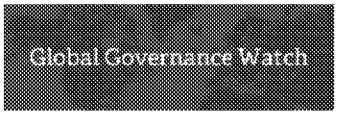
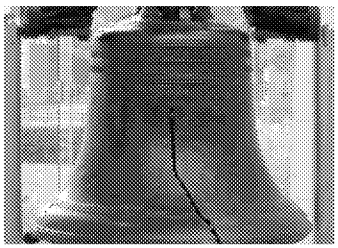
New Online

[ARTICLE] Murray Calls for US Resistance to EU Antitrust Actions



Iain Murray of the Competitive Enterprise Institute writes that, with its recent decision to fine tech giant Google $5 billion for "anti-competitive practices" involving the licensing of its smartphone operating system, the European Commission is seeking to "become the world's antitrust regulator" using faulty analysis at odds with US antitrust rules.
[Read]

FedSoc Blog



Is Telling a "Lawyer Joke" Professional Misconduct? Pennsylvania Considers a Version of ABA Model Rule 8.4(g)

- By Kim Colby

The Dangers of Independence for Executive Branch Agencies

- By Peter J. Wallison

Chevron Deference v. The United States Constitution

- By Daniel Berninger

Liberty Month Revisited: Separation of Powers - A Primer

- By Ryan J. Watson, James M. Burnham

Another Court Rules Against Regulation-by-Litigation in Climate Change Public Nuisance Lawsuits

- By Donald J. Kochan

Liberty Month Revisited: Stare Decisis and the Separation of Powers

- By Randy J. Kozel

Liberty Month Revisited: The Separation of Powers, Stare Decisis, and the Constitution

- By Roger Pilon

Liberty Month Revisited: Immigration and the Separation of Powers

- By Margaret D. Stock

Liberty Month Revisited: Separation of Powers, Essential to Liberty, Is Under Attack

- By John C. Eastman

When Is a Bureaucracy So Independent That It's Unconstitutional?

- By Alex J. Pollock

Liberty Month Revisited: Embracing Delegation

- By Jack Beermann

Liberty Month Revisited: Out of Control: Separation of Powers and Encroaching Delegations

- By Ronald A. Cass

The ALJ Executive Order: A Modest Step Towards Re-Integrating the Executive Branch

- By Joel S. Nolette

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[VIDEO] Free Speech & Off-Label Branding

POLICYbrief
Featuring Christina Sandefur
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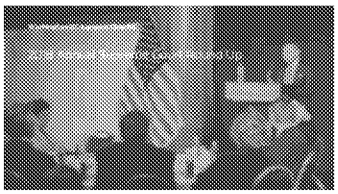
[VIDEO] 2018 Supreme Court Round Up



Washington, DC Lawyers Chapter
Featuring Miguel A. Estrada
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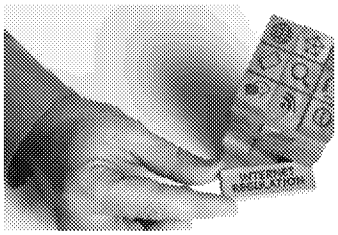
[PODCAST] The GDPR and the Future of Internet Privacy



Regulatory Transparency Project, Telecommunications & Electronic Media Practice Group
Featuring Sunny Seon Kang, Roslyn Layton, Adam Thierer
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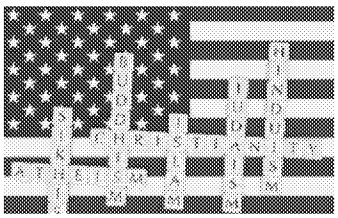
[PODCAST] The Establishment Clause Overseas



Religious Liberties Practice Group
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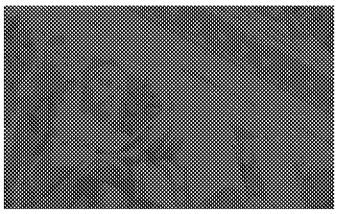
[PODCAST] Gill v. Whitford - Post-Decision SCOTUScast



SCOTUScast
Featuring David W. Casazza
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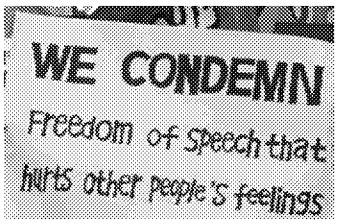
[PODCAST] Wisconsin Supreme Court Upholds Academic Freedom



Free Speech & Election Law Practice Group
Featuring Rick Esenberg
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Subject: We hate to burst your bubble.

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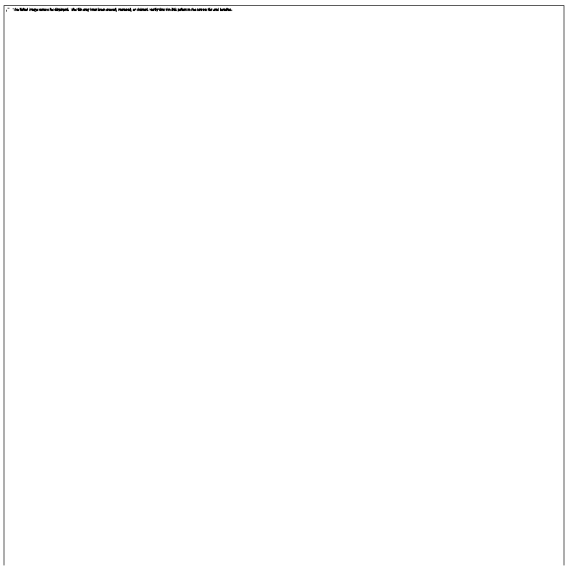
Investors' money is gone, but they can take pride knowing that the solar bubble was not full of CO_2.

Nasdaq (7/25/18) reports: "Last week Goldman Sachs ruined the mood of many in the solar industry—at least of those who pay attention to investment bank forecasts—by projecting that the solar panel market will shrink this year by 24 percent. It's not the only negative forecast either, which is understandable given the latest major developments in the sector."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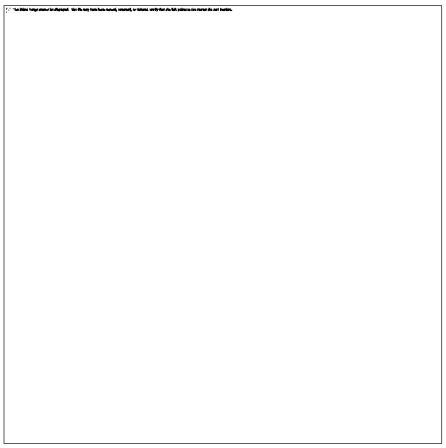

"Economies are complex instruments that always defy central planners, derailing even the best-laid plans. Policymakers must steer clear of this poorly thought out proposal that will achieve little at a gargantuan cost. Lawmakers can preserve the legacy of tax reform by avoiding expensive schemes to engineer ecology."

– Ross Marchand, Taxpayers Protection Alliance and Myron Ebell, Competitive Enterprise Institute

Frack it. Pipe it. Cool it. Ship it.

Washington Examiner (7/25/18) reports: "President Trump hashed out a trade deal on Wednesday that will lead to Europe buying more liquefied natural gas from the U.S. to diversify its energy supplies. Trump said the new steps taken Wednesday to reduce trade barriers on both sides of the Atlantic will also be 'strengthening' the U.S.-European strategic relationship on energy."

Another win for small businesses.

The Hill (7/24/18) reports: "In a final regulation released to the public Tuesday, the Department of Energy (DOE) said it will automatically approve gas export applications if they are at or below 51.75 billion cubic feet of exports per year and do not rise to the level of requiring an environmental review."

It's almost as if these companies might benefit by stifling their competition...

Daily Caller (7/25/18) reports: "Three major foreign-headquartered oil companies have signed onto a letter supportive of a Republican lawmaker's bill to tax carbon dioxide emissions, according to multiple sources... BP and Shell are heavily invested in gas, including in the U.S. where shale production is booming. Norway-based Equinor has production activities in the Marcellus Shale play that's turned Pennsylvania into a natural gas powerhouse."

Energy Markets

WTI Crude Oil: ↓ $69.28
Natural Gas: ↑ $2.79
Gasoline: ↓ $2.85
Diesel: ↑ $3.16
Heating Oil: ↑ $215.97
Brent Crude Oil: ↑ $74.21
US Rig Count: ↑ 1137

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Subject: Keystone Cops

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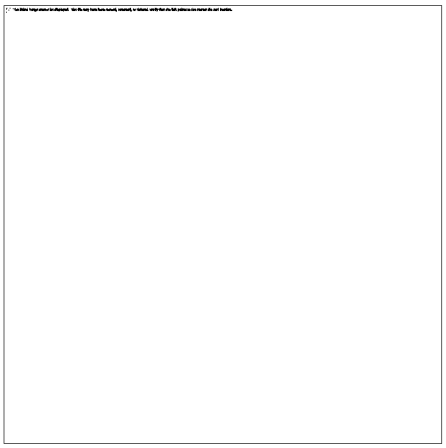
Hat tip to the Auditor General for chasing down this misdirected cash.

Pennsylvania Dept. of the Auditor General (4/25/19) news release: "Auditor General Eugene DePasquale today said his new audit of the Pennsylvania Department of Transportation (PennDOT) shows the agency could be further along in repairing rough highways and fixing 2,829 structurally deficient bridges with the billions of dollars it has been forced to pay to State Police. DePasquale noted that transfers from the Motor License Fund to State Police have totaled more than $4.25 billion since the 2012-13 fiscal year, money that PennDOT could otherwise have used to address a growing list of needed repairs across the state...'There's a whopping 57.6 cents of state tax added to each gallon of gas sold in Pennsylvania,' DePasquale said, noting that adds $5.76 to the cost of every 10 gallons of gas put in the tank. 'Pennsylvanians are frustrated that our roads and bridges still need so much help at the same time we are paying the highest gas tax in the United States.'"



"For the nation's poorest families, energy costs eat up more than a fifth of after-tax income. Leaders in Washington and around the country could help lower those heating bills by encouraging the development of domestic natural gas -- a clean, affordable heating fuel that America happens to possess in abundance."

– Paula Boyland, PJ Media

Something's gotta give.

Clear Energy Alliance (4/25/19) video: "Why are New England states paying more for natural gas than surrounding states (sometimes a LOT more) when the Marcellus and Utica Shale plays are nearby? Even worse, people in these

same states were forced to buy Russian gas the past two winters! This is happening because politicians in New York have been actively blocking pipelines for years creating an artificial shortage of gas. It's costing New Englanders a lot of money, and New Yorkers are paying a heavy price as well."

Regroup. Revise. Redeploy.

E&E News (4/25/19) reports: "President Trump's long-awaited plan to open more than 90% of all federal waters to offshore drilling is on hold, the Interior Department said today. Interior Secretary David Bernhardt made the announcement in an interview with *The Wall Street Journal*, which first reported the story. As one of his first major acts, Bernhardt sidelined the revised plan while his department assesses the fallout of a court decision last month that could affect how Interior officials decide to proceed, he said. A federal judge ruled that the Trump administration couldn't scrap President Obama's drilling ban for most of the Arctic Ocean off Alaska and for a small part of the Atlantic coast without Congress first passing a law. Bernhardt told the newspaper that the case could go through a long appeals process, leaving the plan's future in doubt."

The EV tax credit loophole you can drive your F-150 through.

MarketWatch (4/24/19) reports: "Ford is sinking a half-billion dollars into electric vehicle startup Rivian in a deal that has the companies working together on a

new Ford electric vehicle based on Rivian underpinnings. Ford Motor Co. will become a minority partner in Rivian, which is based outside of Detroit and recently rolled out a new electric pickup truck and an SUV that will go on sale late next year. The tie-up is another sign that automakers and tech companies are pairing up to share the huge capital costs of developing electric vehicles and even those that drive themselves. Ford and Rivian executives both said there's room for the partnership to grow and for the companies to share expertise."

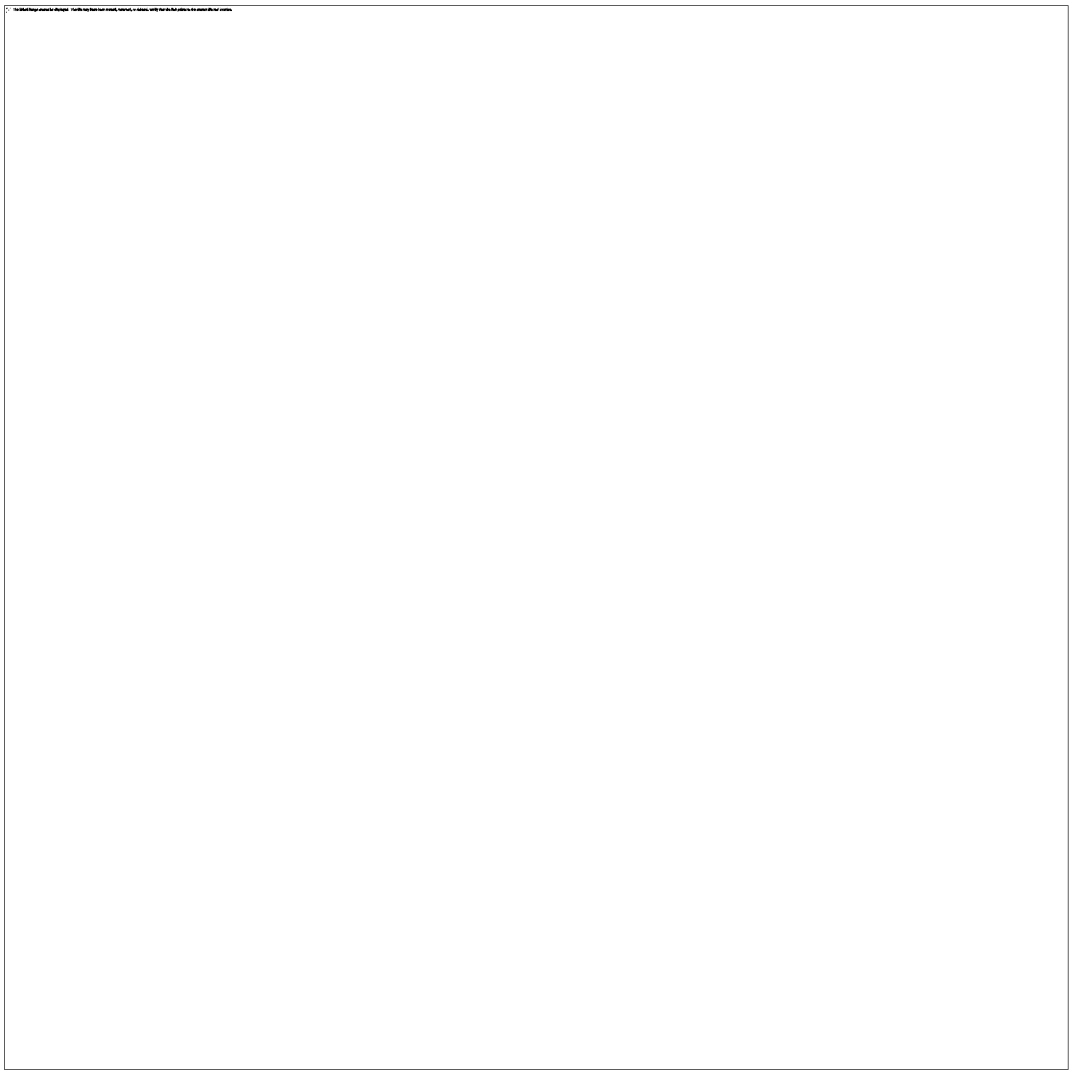
They're not even hiding it anymore.

The Guardian (4/25/19) column: "The tentacles of Big Fossil reach further into the political elite: in the US and Europe, there is a revolving door between government and public sector on the one hand, and fossil fuel companies on the other, with lucrative jobs in these Earth-destroying industries on offer for compliant politicians and civil servants...So long as these sectors remain in private hands, they will continue to place short-term profit for elite investors ahead of the future of the planet and continued existence of humanity. They must be brought under public ownership, with a legal mandate to "green" the economy. One suggestion by the Next System Project is that the US government could create a community ownership of power administration,

modelled on Roosevelt-era New Deal agencies. It would grant legal authority and funding mechanisms to buy back the energy grid and take over energy utilities."

Cross the Rubicon? How'd that turn out for the Roman Senate, Lindsey?

E&E News (4/26/19) reports: "Congressional Republicans are developing legislation to introduce next year that could serve as the GOP framework for addressing climate change. The language will likely center on energy efficiency, natural gas use and technology to clean up coal-fired power plants, Sen. Lindsey Graham (R-S.C.) told reporters yesterday at a banquet sponsored by EarthX, an Earth Day event in Dallas...'We owe it to the country to have an alternative to the Green New Deal,' Graham said. 'We're going to sit down with the president and see if we can unveil a bill for 2020 that would be good for the environment and good for business.' Graham at the event said he's frustrated because large parts of the Republican Party still resist the idea of climate change legislation. 'Let's just cross the Rubicon,' he said. 'Let's, as a party, say the Green New Deal sucks but climate change is real.'"


The Gilbert Ranger shown for illustration. Facility may have been moved, removed, or relocated. Verify that the fuel station is in the correct Ranger station.

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance
Myron Ebell, Competitive Enterprise Institute
Phil Kerpen, American Commitment
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Grover Norquist, Americans for Tax Reform
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Craig Richardson, E&E Legal
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jason Hayes, Mackinac Center
David Williams, Taxpayers Protection Alliance
Paul Gessing, Rio Grande Foundation
Seton Motley, Less Government
Nathan Nascimento, Freedom Partners Chamber of Commerce
Isaac Orr, Center of the American Experiment
David T. Stevenson, Caesar Rodney Institute
John Droz, Alliance for Wise Energy Decisions
Hon. Tim Huelskamp, Ph.D., The Heartland Institute
Mark Mathis, Clear Energy Alliance

Energy Markets

WTI Crude Oil: ↓ $64.22
Natural Gas: ↓ $2.49
Gasoline: ↑ $2.88
Diesel: ↑ $3.09
Heating Oil: ↓ $206.26
Brent Crude Oil: ↓ $73.20
US Rig Count: ↓ 1046

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Message

From: Tubb, Katie [Katie.Tubb@heritage.org]
Sent: 4/25/2019 2:39:06 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: RE: introduction and LNT informational question

Good morning Clint,
I'm just checking in to see if you'd be available to have a conversation sometime on the LNT issue. I realize it was not the smartest of me to email last week when so many people are out for Easter and spring breaks!

Thanks again,

Katie

Katie Tubb
Senior Policy Analyst, Energy and Environmental
Institute for Economic Freedom
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
202-675-1767
heritage.org

From: Tubb, Katie
Sent: Wednesday, April 17, 2019 11:24 AM
To: 'woods.clint@epa.gov' <woods.clint@epa.gov>
Subject: introduction and LNT informational question

Hello Clint,
My name is Katie Tubb and I work for the Heritage Foundation on energy and environment issues. I am trying to find someone at EPA who could get me up to speed on EPA's work on the "linear no threshold" approach to regulation that was included in the scientific transparency proposed rule, and particularly the implications for radiation exposure standards.

I reached out to Mandy Gunasekara and she recommended I speak with you. I'd appreciate the chance to hear what EPA has done and where it's going (or not going) if you have some time in the next few weeks.

Thanks for considering,

Katie

Message

From: Maisano, Frank [frank.maisano@bracewell.com]
Sent: 5/14/2018 6:25:16 PM
To: Maisano, Frank [frank.maisano@bracewell.com]
Subject: May 14 PRG Eerngy Update: Preakness or Pruitt?

Friends,

While I always love the NHL hockey playoffs, now, I'm really excited after last night's Caps victory. Still six wins to go though and that is a long way to go!

This week is Preakness Week and the Preview is below. You can take your winnings from listening to me before the Derby and double your money. It is hard to see how *Justify* doesn't take this race, especially given the smaller 8-horse field and the fact the favorite wins this race more than 50% of the time. It looks like it will be another wet one though which didn't slow *Justify* at the Derby. Our friend Scott Dance of the *BaltSun* has the forecast. Wow… and only 5 days to the big wedding (and yes, NO CHANCE I am previewing it). I'm just glad it's early enough to not impact Preakness.

So last week was Hurricane Preparedness Week and I just wanted to remind you with the 2018 Hurricane Season fast approaching (June 1), you should remember the experts at MIT have a significant amount of really interesting research pushing the frontier of building materials use, with implications for policymakers, building designers, communities, and the vulnerable residents of hazard-prone areas. They have a cool, MIT-developed Break-Even Mitigation Percent (BEMP) tool which calculates the BEMP for eastern U.S. coastal communities prone to damage from hazards related to hurricanes. Along those lines, the American Institute of Architects hosts a discussion tomorrow at 5:00 p.m. to provide design and recovery insights from architects who served as responders following hurricanes last year.

This week is Infrastructure Week, and the action kicked off this morning at Union Station and carries on each day, while Axios hosts an event tomorrow morning with Sen. Inhofe. In the MIT vein, I am reminding you about a recent study using data from the very same MIT research group that says incorporating a life-cycle cost analysis (LCCA) provision into federal infrastructure legislation could save taxpayers $91 million for every $1 billion spent on projects.

On the Hill, it is Scott Pruitt week again. A second great hearing this week on Wednesday includes EPA Air chief Bill Wehrum, former EPA air office head Jeff Holmstead, NAM's Ross Eisneberg, NRECA's Kirk Johnson and several others to discuss the NSR reforms being suggested by the EPA.

Finally, the Farm bill will likely see a vote this week. The bill reauthorizes various commodity, trade, rural development, agricultural research, and food and nutrition programs and will likely get some attention given the current RFS battles. Stay tuned…

Out on Friday… Going to pick up Hannah at Wellesley as **SHE HAS FINISHED HER 2nd year**. OMG!! Call with questions. Best,

Frank Maisano
(202) 828-5864
c. (202) 997-5932

THE PREAKNESS

Now that the Kentucky Derby has come and gone, we have officially entered Triple Crown season. *Justify* put together a powerful showing despite ugly track conditions to win the Derby and emerge as the horse to beat at the 2018 Preakness Stakes.

Justify's run firmly established him as the early/heavy favorite in Baltimore. A field of 8 horses will take to the track on Saturday at Pimlico Race Course in Baltimore. The smaller field will make it a lot easier for Mike Smith to get *Justify* on the lead without traffic/trouble.

Quip and *Sporting Chance* will be new in the field, while Derby runner-up *Good Magic, Bravazo* and *Lone Sailor* return. *Magic* was a strong second but could not close on *Justify* while fresh making it hard to imagine he could be stronger with only two weeks rest. *Bravazo* definitely overachieved with his strong finish at the Derby and could also push, but don't count on it. *Lone Sailor* contended in Louisville but faded down the stretch so he seems to be unlikely to challenge.

The expectation that *Justify* would face a majority field of fresh, rested horses faded some with the small field. Again it seems some are waiting for the longer Belmont to be a fresh spoiler. Even so, *Justify* is a likely to be a heavy favorite (right now he is 1-2).

Justify is 4-0 in his career and just the ninth undefeated Derby winner in history. He also became the first horse since Apollo in 1882 to win the Derby after not competing as a two-year-old, breaking sports' longest existing curse. But even after his stellar performance at Churchill Downs, they still have to run it.

The shorter Preakness will probably still be muddy with rain expected here all week, but *Justify* conquered a very muddy and wet Churchill Downs track. Finally, the last four Baffert horses that have won the Derby, have also won the Preakness.

As for other challengers, *Quip* was the runner up in Arkansas and could hurt *Justify* with his speed, especially on a soggy track, but he is owned by the same group as *Justify*. *Sporting Chance* is a good long shot if you're looking for that. He ran the Pat Day Mile on Derby Day and looked strong despite his 4th–place finish. Other horses in the field will include *Diamond King*, *Tenfold* and *Pony Up.* Each of those will be fresh which makes them potentially dangerous, but a wet track tends to limit sleepers' chance to surprise. *King* is a local winner here in Maryland; *Tenfold* comes from the pedigree of 2007 Preakness Champ *Curlin*, won a couple of minor races earlier this year, but finished a distant 5th to *Magnum Moon* and *Quip* in Arkansas. *Pony Up* is in the *Seattle Slew/AP Indy* lineage and placed 3rd behind *My Boy Jack* at Keeneland in mid-April.

Some Good Preakness Facts

The Race: This is the 143rd Preakness Stakes. The Preakness is older than the Kentucky Derby but rarely gets credit for it. The Preakness was first run in 1873, two years before the first run for the roses. But since the Preakness wasn't run from 1891-1893 this year is the 143rd Preakness and the 144th Derby.

Distance: 1 3/16 mile (the shortest of the Triple Crown Races) or 9½ furlongs.

The Track: The Pimlico Race Course first opened in Baltimore, Maryland on Oct. 25, 1870. It is the second oldest racetrack in the country, behind only Saratoga in Saratoga Springs, New York. Pimlico was originally built so former Maryland Gov. Oden Bowie and his friends, horse racing enthusiasts, could race horses against one another. At a dinner party in 1868, Bowie and his friends agreed to hold a race in two years where the winner would host the losers for dinner. Despite both Saratoga and the America Jockey Club wanting to host the event, Bowie decided to build a brand new racetrack in his home state of Maryland for the occasion.

The Drink: In my Derby Preview, I slept on the Mint Julip and many of you reminded me of that important tradition. Therefore, here is the recipe for the Black-Eyed Susan, the official drink of the Preakness. The official ingredients include:

- 1½ ounce of Effen vodka
- 1 ounce of Makers Mark Bourbon
- 2 ounces of Orange Juice
- 2 ounces of sour mix

- Garnish with an orange and cherry

Post time: 6:18 p.m. EST

Weather: Rain all week with potentially 3 to 4 inches in Central Maryland. Rain on race day.

Purse: $1.5 million with winners taking home 60% ($900,000). Top five get $$$. The Winner also receives a blanket of Black-Eyed Susans 18-inches wide and 90 inches long. It takes 8 hours to make the blanket.

Posts: Positions #5 and #6 have each seen two horses win since 2008. *Curlin* won from the #4 post in '07, but last year's Derby winner *Always Dreaming* bombed from there despite 13 winners in the past 114 years. Somewhere in the middle has been consistently the best spot, but the lowest numbers have been kind of late. *American Pharoah* won from No. 1 on its way to the Triple Crown in '15, following *California Chrome* from No. 3 in '14. Last year *Cloud Computing* shocked everyone out of No. 2. Again, the small size of the field and wet track may make this less important.

Odds:
Justify 1-2
Good Magic 3-1
Quip 12-1
Bravazo 18-1
Tenfold 20-1
Pony Up 25-1
Sporting Chance 28-1
Diamond King 28-1
Lone Sailor 30-1

Picks: Win – *Justify*; Place – *Quip*; Show – *Sporting Chance*

Super Box: Add – *Good Magic*

Sleeper Note: Don't be surprised if *Bravazo* once again sneaks into the mix.

Longshots: Definitely lay the $2 on *Sporting Chance*

FRANKLY SPOKEN

"Terrific final decision from @POTUS meeting: E15, year-round plus RINs for all exports. This is a WIN-WIN for everyone. More corn will be sold (good for farmers), plus lower RINs (saves blue-collar refinery jobs), plus more ethanol exports (good for America)."

Sen. Ted Cruz on Twitter after a meeting at the White House with President Trump, EPA head Pruitt, Ag Sect Perdue and Sens. Toomey, Grassley and Ernst.

ON THE POD

Energy Gang Discussed New Tech Investments with Statoil –On a recent Energy Gang podcast, our friends at GTM talked with the executive in charge of Statoil's new energy investments, Stephen Bull. Statoil is the largest operator of oil and gas rigs around the world. Consequently, the company's biggest low-carbon investments are offshore: floating wind farms and distributed carbon capture and storage. Bull chats with The Energy Gang about the performance of floating wind, the economics of CCS, and whether oil companies are investing enough in their new energy divisions.

FUN OPINIONS

Cruz Talks Iran, NK, Biofuels on Fox – Late last week, Senator Cruz addressed the White House meeting on the RFS on Fox News saying "the President is saving tens of thousands of jobs" by fixing the broken RINs program. See it here: http://video.foxnews.com/v/5783087431001/?#sp=show-clips

IN THE NEWS

Chamber Energy Group Rolls out New Energy Innovation Initiative – The U.S. Chamber of Commerce's Global Energy Institute has launched a new multi-platform initiative to highlight energy innovation efforts by industry. The *EnergyInnovates* tour kicks off with Alabama Power's Smart Neighborhood, a partnership that includes Southern Company and Oak Ridge National Laboratory which employs a microgrid capable of reliably powering a community with solar, batteries or a backup natural gas generator.

Barclays Says Ethanol Exports Will be a Better Policy – Barclays Capital weighed in on ethanol exports saying in a report that the proposal export RINs would be a better solution to fix the Renewable Fuel Standard than year-round E15 gasoline. Barclays note said the drop in ethanol RIN prices by more than 50% year to date was largely due to the series of 2016 and 2017 waivers provided by the EPA, which has functionally reduced RIN demand. However, retroactive waivers, while offering temporary price relief through balancing RIN supply/demand, are not a structural or sustainable solution. They also added the "possibility of ethanol exports being counted toward the RIN requirement could potentially solve the RIN deficit issue and lead to a structurally much lower RIN price."

EPA Looks to Build Economics Into NAAQS Decisions – Last Week, EPA said it will overhaul how it reviews national ozone limits by considering a range of adverse effects including economic and energy-related ones. Administrator Scott Pruitt signed a memorandum kicking off the agency's review of the latest National Ambient Air Quality Standards for ozone, established in 2015 with the aim of finalizing a decision to reconsider, modify or maintain the NAAQS within the five-year window mandated by the Clean Air Act. The current ozone NAAQS stands at 70 parts per billion. The Chamber's Dan Byers said "EPA's NAAQS process has long been in need of improvement. The announcement signals a new approach focused on key statutory duties and regulatory flexibility, which should lead to a better process that won't impede economic growth."

Chamber Blog Highlights Jobs Benefits of HFC Reduction – Remember last week's announcement regarding economic impacts of the Kigali amendment to limit HFCs, the Chamber penned a blog

UTC Members Elect SoCo's Bryant as New Board Chair – Energy and water utility representatives across the U.S. approved a new slate of officers to lead the Utilities Technology Council (UTC). At UTC's Annual Telecom & Technology Meeting today in Palm Springs, Calif., UTC's core members elected Roger Bryant, IT Project Manager, Telecom Services at Southern Company Services, as its new Chairman of the Board. Mr. Bryant succeeds Immediate Past Chair Kathy Nelson of Great River Energy. UTC members also elected Greg Angst, Engineer in the Telecom Design Group at CenterPoint Energy, as its Vice Chair, and Kevin Huff, Telecommunications Operations Manager at Salt River Project, as its Secretary/Treasurer.

GTM Looks at Trends in Solar – A new report from GTM says – In the last five years – the cost of solar has fallen 48% and annual global solar installations are now total 100 gigawatts. In a presentation at Solar Summit earlier this month, GTM Research's Scott Moskowitz highlighted current trends in solar PV technology like the rise of 1,500 volt systems and three-phase inverters overtaking central inverters. He also went on to provide an outlook on PV system prices.

ON THE SCHEDULE THIS WEEK

Forum to Look at China Nuclear – The Carnegie Endowment for International Peace will host a forum and launch of "The Future of Nuclear Power in China" today at 2:30 p.m. The groundbreaking new report, "The Future of Nuclear Power in China," identifies and analyzes the challenges facing Chinese decision makers in developing and deploying nuclear power technology through mid-century. Speakers will include Mark Hibbs and Jane Nakano will discuss. James Acton will moderate.

Citi Energy Conference Set – Today through Wednesday, the Citi Global Energy & Utilities Conference is held in Boston and Cambridge, Mass. Participants include executives from Hess Corp., Devon Energy and other companies

Axios to Host Infrastructure Discussion – Axios' Mike Allen will host conversations on the news of the day and how it relates to Infrastructure Week tomorrow morning at 8:00 a.m. at AJAX. The event will feature Sen. Jim Inhofe, DC House Del. Eleanor Holmes Norton and Austin Mayor Steve Adler, who chairs the U.S. Conference of Mayors Subcommittee on Highways.

ITA Holds Enviro Tech Forum – The International Trade Administration holds a meeting of the Environmental Technologies Trade Advisory Committee tomorrow. The agenda includes optimizing the government's trade promotion programs; identifying market access barriers; discussing pros and cons of existing trade agreements; discussing foreign procurement policy, including issues with financing mechanisms; discussing localization requirements and non-tariff barriers; and making recommendations to the secretary.

Women in Green Power Forum Set – The US Green Business Council- National Capital Region holds its 3rd annual Women in Green Power Breakfast at The Hamilton tomorrow morning. The event celebrates women in local sustainability who are at the top of their game. Get inspired at this critical time for environmentalism and feminism. Through facilitated networking and a panel discussion featuring local Women in Green, the event will explore the complexities of women's leadership and share proven leadership principles practiced by female green leaders at every stage of their career, who are changing the way we think and build in the National Capital Region.

SE Solar Power Forum Set – The Solar Power Southeast is tomorrow and Wednesday in Atlanta. The focus of the event bring together those that are doing business in the region, or would like to conduct more business in the region to discuss strategies, market trends in the southeast, policy updates that impact businesses, and numerous networking opportunities to make more connections. SEIA head Abby Hopper leads the discussion.

Forum to Look at Central American Power Market Design – The US Energy Association will host a forum tomorrow at 10:30 a.m. on using best practices to design power sector programs. Juan Belt will look at case studies in Haiti & Central America Belt will discuss a paper he wrote for the Copenhagen Consensus Center (CCC) that proposes measures to improve the power sector in Haiti and is based on best practices. The CCC "eminent panel", which included a Nobel Prize winner, selected this paper as the best among 85 proposed interventions, and the International Confederation of Energy Regulators (ICER) gave it the "Distinguished Scholar Award for 2018." Belt and UDAID's Silvia Alvarado will also discuss a paper they are writing. Silvia is a former USAID officer and regulator of Guatemala, on possible measures to improve the power sector of the six Central American countries as well as the regional power pool. The paper will highlight the reasons why the reform in Guatemala succeeded, will describe USAID support, and will suggest what lessons could be applicable to other countries in the region and elsewhere.

Forum to Look at Saudi Nuclear Issues – Tomorrow at 12:00 p.m., the Global America Business Institute hosts a forum looking at commercial perspectives on Saudi Enrichment. Speakers will include Andrea Jennetta of Fuel Cycle Week and Melissa Mann of URENCO USA Inc.

Cal Energy Summit Set – The 6th annual California Energy Summit 2018 launches tomorrow in Redondo Beach and will bring policy-makers together with utility, IPP, energy storage and finance executives to provide the latest information on the opportunities and threats in California, and discuss potential strategies for the future. Our friends Dan Skopec off San Diego Gas & Electric and 8MinuteEnergy's Arthur Haubenstock will speak along with CAISO's Neil Millar, First Solar's Mark Fillinger and others.

UDel to Host Biden, Moniz on Prospects for Energy Jobs, Innovation – The University of Delaware hosts former VP Joe Biden and former Secretary of Energy Ernie Moniz for a conversation about the future of energy jobs and innovation in the U.S. tomorrow in Newark, DE. The event is a partnership between the Biden Institute and the Delaware Environmental Institute (DENIN) at the University. The event will also be streamed live. To view the live webcast, visit

sites.udel.edu/udlive. The link will become active 10 minutes before the program begins at 12 p.m. A recording will be posted on the DENIN website following the event.

Wilson Forum Hosts AK LG Mallott – The Woodrow Wilson Center holds a forum tomorrow at 1:30 p.m. will host Alaska Lt. Gov Byron Mallott shaping Alaska's climate policy. Mallott will speak to the State of Alaska's response to climate change through the work of the Climate Action for Alaska Leadership Team, established last October and charged with developing a recommended climate action plan and policy by September 2018. Follow the work of the CALT and preview the draft climate policy here. An Alaska Native and clan leader of the Tlingit Raven Kwaash Kee Kwaan of Yakutat, Lt. Governor Mallott will also highlight work building partnerships with Pacific Island nations to create an indigenous, ocean-focused approach to climate solutions.

Coal Council Hosts Milloy to Discuss CCS – Tomorrow at 2:00 p.m., American Coal Council holds a Q&A webcast on innovative Carbon Capture and Sequestration solution with multiple environmental benefits. The web event will feature Steve Milloy. Interest in accelerating the development and deployment of technologies for CO2 emissions reduction is growing, as is the recognition that the cost of carbon capture and sequestration must be reduced to facilitate meaningful progress. Enhanced oil recovery is one strategy, and there are others such as direct air capture.

Aspen to Discuss Ocean Policy – The Aspen Institute holds a discussion on physical, chemical, and biological oceanography at 2:15 p.m. Panelists include Dr. Sylvia Earle, Co-Chair, Aspen Institute High Seas Initiative; Dr. Fanny Douvere, Coordinator, Marine Program, World Heritage Centre UNESCO; Dr. Francesco Ferretti, Research Associate, Stanford Hopkins Marine Station; and Dr. Barb Block via the White Shark Café. This event is the first for the High Seas Initiative, a program of the Aspen Institute that will ignite global awareness of the need to explore, understand and protect the last unregulated global commons: the remote ocean. The Initiative will work to support the creation, expansion, and enforcement of marine reserves, as well as educating and engaging youth to become future leaders working on behalf of our oceans.

AIA hosts Discussion on Insights for Hurricane Design, Recovery – The American Institute of Architects (AIA) is hosting an educational discussion at 5:00 p.m. tomorrow to provide design and recovery insights from architects who served as responders following hurricanes Maria, Harvey and Irma last year. Architects offer a unique perspective—not only to design communities and buildings to withstand disaster—but to analyze structural performance during post-disaster relief work. The panel will cover crucial information for the Senate to understand, especially as they consider the House passed Disaster Recovery Reform Act. In addition, the National Institute of Building Sciences will present relevant highlights from its Natural Hazard Mitigation Saves: 2017 Interim Report regarding the economic benefit of governments continuing to publicly fund disaster mitigation efforts.

Senate Approps to Host Pruitt – EPA Administrator Scott Pruitt is scheduled to testify on Wednesday at 9:30 a.m. before the Senate appropriations subcommittee that oversees his budget according to Sen. Lisa Murkowski, who chairs the panel.

House Approps Marks up Energy Funding – The House Appropriations Committee will mark up its fiscal 2019 energy and water title on Wednesday at 10:00 a.m.

House Science Look at Tech to Address Climate – The House Science Committee holds a hearing Wednesday at 10:00 a.m. on using technology to address climate change. Witnesses will include Oren Cass of the Manhattan Institute, Ted Nordhaus of the Breakthrough Institute, Phil Duffy of the Woods Hole Research Center and Georgia Tech's Judith Curry.

House Energy to Look at NSR Program Reforms – The House Energy and Commerce Environment panel will hold a hearing on Wednesday at 10:15 a.m. EPA Bill Wehrum, Bracewell's Jeff Holmstead (himself a former EPA Air office head), NAM's Ross Eisenberg and NRECA's Kirk Johnson will be among those testifying.

Moniz to Introduce '18 U.S. Jobs Report – The Energy Futures Initiative (EFI) and the National Association of State Energy Officials (NASEO), will publicly release the 2018 U.S. Energy & Employment Report (USEER) Wednesday at 10:00 a.m. in 212-10 Senate Visitors Center. This is the third installment of the energy jobs survey established by the U.S.

Department of Energy in 2016, which offers data on employment trends in four key energy sectors. Monix will be joined by NASEO head David Terry and author David Foster.

BPC to look at Private-Public Partnerships – The BPC's Executive Council on Infrastructure is holding an event on Wednesday at 10:00 a.m. highlighting the role of public-private partnerships, or P3s, in addressing America's $2 trillion in unmet infrastructure needs. P3s can bring private sector innovation, expertise, and capital to projects, helping communities across the U.S. modernize their transportation, water, and other infrastructure systems. Keynote remarks by Australian Ambassador to US Joe Hockey and a panel featuring Bechtel's Keith Hennessy and Lilliana Ortega of Parsons.

Forum to Look at Manufacturing – On Wednesday at 10:00 a.m., the Information Technology & Innovation Foundation releases a new report that reviews the progress of DOE's Manufacturing USA Institutes and looks ahead to their future. The report's authors, ITIF Senior Fellow David M. Hart and Peter L. Singer, will present their findings and discuss policy options to guide their next stage of evolution with an expert panel.

ELI to Look at Deregulation – The Environmental Law Institute will hold a forum and panel on Wednesday at Noon to discuss obstacles to deregulation, including when, and how, an agency must consider costs and benefits of staying, repealing, and rewriting rules. Speakers will discuss the types of rules and guidelines to which these requirements do and do not apply; comment on current challenges to the Trump Administration's deregulation agenda; and offer insights on the ways that administrative law is developing through interpretation of the APA and other relevant statutes.

Salazar Heads Press Club Dinner – The National Press Club Communicators Team hold its Legends Dinner on Wednesday at 6:00 p.m. in the Winners' Room. The honored guest will be former Interior Secretary and Colorado Sen. Ken Salazar. The dinner conversation will focus on the important communications-based strategies that moved his agenda and built a strong communications team, touching on: due diligence, crisis management, gaining congressional and White House support, building consensus with business leaders and constituents and working with media and reporters. Salazar will share practical lessons and challenges with that can bring value to contemporary communicators.

Forum to Look at PPPs – The Brookings Institution and the National Association of Counties hold a discussion on Thursday morning at 8:00 a.m. looking at modernizing infrastructure policies to advance public-private partnerships. Panelists will include NACo President and Tarrant County Commissioner Roy Charles Brooks and D.C. Office of Public-Private Partnerships Deputy Director Judah Gluckman.

Total CEO Hosted by CSIS – The CSIS Energy & National Security Program will host Patrick Pouyanné, Chairman and CEO of Total on Thursday at 9:00 a.m. for a conversation on Total's global gas, renewables, and power strategies and their implications for the company's activities in the United States. The discussion will encompass Total's position in natural gas markets, the growth and impact of renewables, and Total's investments in the renewables and power sectors.

Forum to Look at MI CCS Project – On Thursday at 10:00 a.m., the U.S. Energy Association will hold a forum focused on the Midwest Regional Carbon Sequestration Partnership (MRCSP), a large-scale demonstration project recently achieved the net CO2 storage of 1,000,000 metric tons in the CO2-EOR fields in Northern Michigan. This briefing will discuss how lessons learned from this successful program can be used to move CCUS towards deployment in appropriate settings. In addition to providing key aspects of the program, the speakers will discuss how the MRCSP research is impacting new projects in the USA and globally to build technical capacity. Speakers include Battelle's Lydia Cumming and Neeraj Gupta.

FERC Open Meeting – Thursday at 10:00 a.m.

Wilson to Host Brazil Bioeconomy Forum – On Thursday at 10:00 a.m., the Woodrow Wilson Center hosts a discussion of the future challenges and opportunities for agricultural value chains in a bioeconomy era with leading experts. Brazil, as one of the leading global agricultural producers and exporters, will play a significant role in building this new bioeconomy era. Led by Embrapa, the Ministry of Agriculture's research arm, Brazilian scientists and policymakers are already engaged in cutting-edge research involving microbes, genetic engineering, and biomolecules: new technologies

based in biology that have the potential to enhance agricultural productivity and the quality of food, while improving environmental sustainability.

Senate Environment to Look at Water Infrastructure – The Senate Committee on Environment and Public Works will hold a legislative hearing on Thursday at 10:00 a.m. on S.2800, America's Water Infrastructure Act of 2018.

ACORE Leads State of Industry Webinar – On Thursday at Noon, the State of the Industry Webinar, a quarterly series produced in partnership between ACORE and Bloomberg New Energy Finance (BNEF), offers the latest intelligence and analysis on renewable energy markets, finance and policy. This quarter's webinar will reflect on the immense growth of community choice aggregation (CCA) in California as well as its emergence in other markets. Speakers will offer insights on the dynamics of CCA deals, and considerations in how to tackle and underwrite such projects.

AEE to Hold Cybersecurity, Grid Webinar – The Advanced Energy Economy will hold a webinar on Thursday at 2:00 p.m. on cybersecurity in a distributed energy future. The webinar will address protecting an evolving grid from digital attack. The panel of experts — all contributors to the AEE Institute white paper on cybersecurity — will discuss ways to make an increasingly complex, interactive, and distributed electricity system more resilient against cyber threats. Panelists include John Berdner of Enphase Energy, NYPA's Ken Carnes, Navigant's Ken Lotterhos and Todd Wiedman, Director, Security and Network, Landis+Gyr. Moderated by Lisa Frantzis, Senior Vice President, 21st Century Energy System, Advanced Energy Economy.

Moniz to Deliver Georgetown School Commencement – Former Energy Secretary Moniz delivers Georgetown University's School of Public Policy commencement ceremony Thursday at 5:30 p.m.

House Panel to Look at Waste Disposal – The House Energy and Commerce's environment panel discusses two reauthorization bills related to waste disposal in a legislative hearing on Friday at 9:00 a.m. The hearing is focused on H.R. 2278, the Responsible Disposal Reauthorization Act of 2017, and H.R. 2389, to reauthorize the West Valley demonstration project and for other purposes."

Forum to Talk Economic Methods –The US Assn of Energy Economists of the National Capital Area will hold its monthly lunch on Friday at the Chinatown Gardens restaurant featuring Powerhouse's David Thompson and focused on collecting and analyzing supply & demand data in the energy sector. Technical analysis (TA) differs from fundamental research as it focuses on price action and how that affects market participants' decision-making. While the two schools start from different perspectives, it's a mischaracterization to suggest they are antagonistic to one another. Many analysts use technical tools in concert with fundamental research as they develop market forecasts.

IN THE FUTURE

NAS Hosts Small Business Meetings – The National Academy of Sciences' Board on Science, Technology and Economic Policy will meet on next Monday and Tuesday to review the Small Business Innovation Research and Small Business Technology Transfer Programs at the Department of Energy Review.

Fox to Address Trade, Immigration, Trump – The National Press Club will host a Headliners Luncheon on Tuesday, May 22nd featuring former Mexican President Vicente Fox. Fox will deliver an address entitled "Democracy at the Crossroads: Globalization versus Nationalism". Fox, a right-wing populist representing the National Action Party (PAN), was elected as the 55th President of Mexico on December 1, 2000. Winning with 42% of the vote, Fox made history as the first presidential candidate in 71 years to defeat the Institutional Revolutionary Party (PRI). Fox's administration focused chiefly on improving trade relations with the United States and maintaining Mexico's growing economy. Fox left office in 2006, and in a break with his country's cultural norms and traditions has remained in the public eye post-presidency and has not been shy about expressing his views and opinions.

Forum Spotlights Rural Co-Ops – The Partnership for Advancing an Inclusive Rural Energy Economy, a collaboration between the National Cooperative Business Association CLUSA and the Environmental and Energy Study Institute will hold a livecast on Tuesday May 22nd at 1:00 p.m. to look at how rural electric cooperatives are delivering cutting-edge

inclusive energy efficiency programs for their members--saving them money while supporting local economic development. This livecast will include information about the **U.S.** Department of Agriculture's Rural Utilities Services (RUS) loan program that co-ops can take advantage of to help deliver these benefits. Livecast speakers include Doug O'Brien of the National Cooperative Business Association CLUSA, Roanoke Electric Cooperative CEO Curtis Wynn and Mike Couick of the Electric Cooperatives of South Carolina. Roanoke Electric's "Upgrade to $ave" program and the "Help My House" program available to South Carolina's co-ops offer on-bill financing to help members afford cost-saving home energy upgrades. With on-bill financing, members repay their co-ops over time as part of their monthly electric bills, and the programs are designed so that members of all income levels can participate.

Forum to Look at Waste Energy – The Environmental and Energy Study Institute (EESI) and the American Biogas Council (ABC) hold a briefing on Wednesday May 23rd looking at the numerous challenges posed by organic wastes-to human health, water and air quality, and to businesses that must manage these wastes-and how anaerobic digestion offers solutions to these pressing issues. Anaerobic digestion is the process of converting organic materials, typically viewed as wastes, into usable products, including biogas, renewable natural gas (RNG), as well as valuable organic fertilizer and compost. These biogas systems turn a waste management issue into a revenue opportunity for America's farms, dairies, food processing, and wastewater treatment industries. Speakers for this forum will discuss the tremendous opportunities for rural and urban communities alike to use anaerobic digestion to foster healthy communities and businesses.

CSIS, EPIC to Hold Nuclear Forum – CSIS and the Energy Policy Institute at the University of Chicago (EPIC) will hold a half-day public conference on Thursday afternoon May 24th to address pressing questions in an effort to better understand the potential future of U.S. nuclear power. Nuclear energy faces an uncertain future in the United States as the fuel is beset by fierce competition from natural gas and renewable energy in many markets. Coupled with failure to deliver new projects on time and at cost, along with a public sensitive to operational safety, existing and future nuclear power generation is at risk in the United States.

Press Club Hosts Fox News Anchor – Bret Baier, chief political anchor for Fox News Channel and the anchor and executive editor of "Special Report with Bret Baier," will share his latest book, "Three Days in Moscow: Ronald Reagan and the Fall of the Soviet Empire," at a National Press Club Headliners Book Event on Tuesday, May 29th, at 7:30 p.m. in the Club's conference rooms. In "Three Days in Moscow" Baier uses the 1988 Moscow Summit, Reagan's pivotal final meeting with Communist Party Leader Mikhail Gorbachev, to examine the life and legacy of Reagan and his arduous battle with the Soviet Union through a new lens.

FERC Chair Headlines EIA Annual Energy Conference – EIA holds Its annual 2018 Energy Conference on June 4th and 5th at the Washington Hilton. FERC Chair Kevin McIntyre will keynote the event.

Hydrogen, Fuel Cell Forum Set for DC – The Fuel Cell and Hydrogen Energy Association will be hosting a full-day forum and exposition on Tuesday, June 12 in Washington, D.C. at the Ronald Reagan Building and International Trade Center with leading executives, experts, and policymakers on fuel cell and hydrogen technology. The forum will bring together key federal and state policymakers, including the Department of Energy and White House, as well as the broader environmental, transportation, and energy communities to raise awareness of the benefits of fuel cell and hydrogen technology. This event will precede the Department of Energy's 2018 Annual Merit Review.

GTM to Host Grid Forum – Greentech Media host Grid Edge Innovation Summit on June 20th and 21st in San Francisco. The event is an energy conference that will examine the energy customer of tomorrow and how new innovative business models are quickly emerging. GTM brings together forward thinking and prominent members of the energy ecosystem and as our research team explores the future of the market. Former FERC Chair Jon Wellinghoff will speak along with many others, including our friends Shayle Kann, Julia Pyper and Stephen Lacey.

Young Professional Program for World Gas Forum Set – The Young Professionals Program (YPP) will hold a special forum during the World Gas Conference June 25-29 in Washington, DC. YPP will provide a great opportunity for promising young professionals in the energy sector to learn from top leaders in the natural gas industry and network with their peers throughout the world. More on this as we get closer.

Clean Energy Forum on Schedule – The 2018 Congressional Clean Energy Expo and Policy Forum will be held on July 10th and brings together up to 45-55 businesses, trade associations, and government agencies to showcase renewable energy and energy efficiency technologies.

FRANK MAISANO
Senior Principal
Ext. 5864
Policy Resolution Group

Message

From: American Energy Alliance [info=americanenergyalliance.org@mail112.us4.mcsv.net]
on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 8/17/2018 1:49:08 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Déjà vu all over again...

View this email in your browser

MORNING ENERGY NEWS | 8.17.2018

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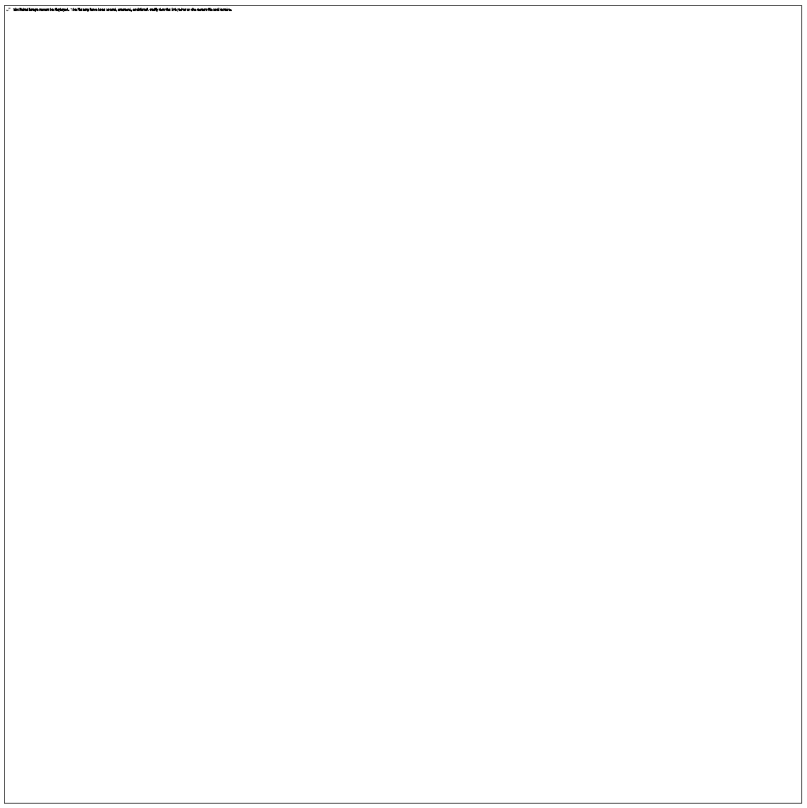
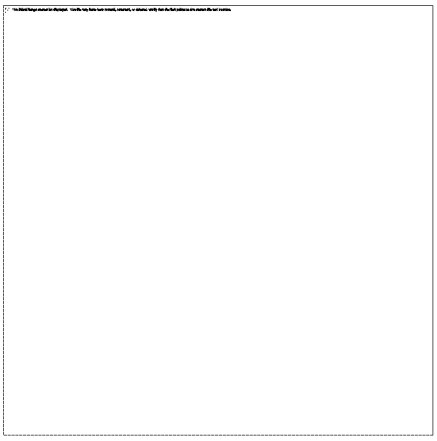
If at first you don't succeed, sue, sue again.

The Hill (8/16/18) reports: "A federal judge has ordered the government to conduct a full environmental review of a new route for the Keystone XL pipeline in a blow for the Trump administration. Reuters reported that U.S. District Court Judge Brian Morris in Montana made the ruling late Wednesday in favor of the Indigenous Environmental Network and other groups challenging the pipeline. The decision is likely to delay the project, which was proposed more than 10 years ago."


Distributed Energy Resources Hydrogen
Use the pump form to enter events, structures, additional notify form for EPA, NPDES or other related Notices.



"A different approach might stand a better chance in Congress — one that would focus on building more clean energy, rather than taxing emissions. This could be accomplished by setting a national clean-energy standard. This policy would require the share of American electricity from low-emitting sources to increase steadily over time."

– Justin Gillis and Jameson McBride, *NYT Opinion*

WOTUS hits a rocky shore.

E&E News (8/16/18) reports: "The Obama-era Clean Water Rule became the

law in 26 states today as a federal judge in South Carolina issued a nationwide injunction on the Trump administration's delay of the regulation that defines what wetlands and waterways get federal protection. The injunction targets the Trump administration's February order suspending the rule while EPA and the Army Corps of Engineers worked up a new version."

As they teach in elementary school math: show your work.

Washington Examiner (8/16/18) reports: "The Environmental Protection Agency is set to take a big step forward Thursday toward implementing a contentious 'secret science' rule, a move that critics fear will undermine the scientific process in favor of cherry-picking research that supports specific outcomes. The 'Strengthening Transparency in Regulatory Science' rulemaking, as it is formally titled, would require EPA's scientific studies to be independently verified through a peer-reviewed process outside the agency...The rule would help the industry contain the cost of new regulation by giving them the ability to question the basis of new pollution standards, especially if the "public is likely to bear the cost of compliance" with those regulations, according to the EPA."

Who'd a thunk it: solar panel mandates make homes more expensive

Inside Sources (8/14/18) reports: "California, with its temperate weather and sunny skies, has been America's poster child for solar energy. The bulk of the panels installed in the past year have been placed in California and the state's government is happy to use legislation to try to push the state further into its green energy future. Unfortunately for state residents, these mandates are likely to increase the cost of living in one of America's most expensive states. A new solar mandate is likely to dramatically increase the cost of housing in the Golden State."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance
Myron Ebell, Competitive Enterprise Institute
Phil Kerpen, American Commitment
William O'Keefe, George C. Marshall Institute

Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Joe Bast, Heartland Institute
David Ridenour, National Center for Public Policy Research
Michael Needham, Heritage Action for America
Grover Norquist, Americans for Tax Reform
Sabrina Schaeffer, Independent Women's Forum
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Rich Collins, Positive Growth Alliance
Craig Richardson, E&E Legal
The Honorable George Allen, American Energy Freedom Center
Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $65.73
Natural Gas: ↑ $2.92
Gasoline: $2.85
Diesel: $3.15
Heating Oil: ↑ $211.30
Brent Crude Oil: ↑ $71.98
US Rig Count: ↓ 1135

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Message

From: barbara bankoff [babankoff@gmail.com]
Sent: 4/9/2018 2:58:03 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Fwd: Invitation: The Irreproducibility Crisis of Modern Science

Clint -
You may have received this from Angela already, but I wanted to be sure you saw it. The talk and reception at CEI are a follow on from the previous workshop at CEI. I know it's not likely you can come, but it would be great.

I may call you this afternoon. Still hoping to connect with you.

Best,
Barbara
---------- Forwarded message ----------
From: **Angela Logomasini** <Angela.Logomasini@cei.org>
Date: Fri, Apr 6, 2018 at 4:25 PM
Subject: Invitation: The Irreproducibility Crisis of Modern Science
To: Angela Logomasini <Angela.Logomasini@cei.org>

The National Association of Scholars will release an important new study on ***The Irreproducibility Crisis of Modern Science*** on Tuesday, November 17th. Please join us at CEI for a discussion by the authors, David Randall and Christopher Welser, at 4:30 PM on Tuesday, November 17th. NAS will have printed copies of the study for you. NAS President Peter Wood will also be at the event.

We will have an informal reception with drinks and snacks after their presentation beginning at about 5:15. If you can't make it at 4:30, you're still welcome to join us from 5:15 till 6:30.

Please respond to this e-mail if you would like to attend. Here are the details:

Location: CEI, 1310 L Street, N. W., Seventh Floor
Date: Tuesday, April 17th
Time: 4:30 PM—presentation by the authors and discussion
Time: 5:15-ish to 6:30—informal reception

Earlier launch event:
The NAS study will be formally launched earlier in the afternoon in the House Science Committee hearing room, 2318 Rayburn, at 2 PM. Chairman Lamar Smith will make opening remarks and the two authors will give a more detailed presentation of their analysis and recommendations for reform. You are welcome to attend that event as well. Here is the link to Rsvp: https://www.eventbrite.com/e/launch-event-the-irreproducibility-crisis-of-modern-science-tickets-44647901074.

Angela Logomasini, Ph.D.
Senior Fellow
Competitive Enterprise Institute
1310 L Street NW, 7th Floor
Washington, DC 20005
Direct ph: (202) 331-2269
Websites: CEI.org and SafeChemicalPolicy.org

Message

From: Dolley Madison [fedsoc@fed-soc.ccsend.com]
on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 4/23/2018 2:47:22 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Calls This Week -- April 23, 2018

April 23, 2018

Teleforum Calls This Week

Dial 888-752-3232 to Participate

Courthouse Steps: *Lucia v. SEC*

Litigation and Administrative Law Practice Groups Teleforum

Monday, April 23, 2018 | 3:00 p.m. ET

Prof. Gregory Dolin
Co-director of the Center for Medicine and Law
University of Baltimore School of Law

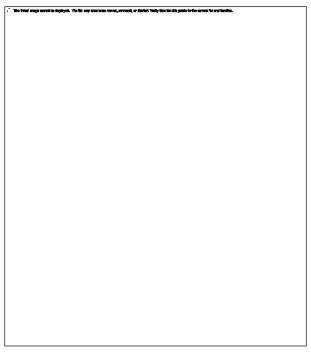
Kevin B. Muhlendorf
Partner
Wiley Rein LLP

In *Lucia v. SEC*, the SEC fined the petitioner Raymond J. Lucia $300,000 and barred him from working as an investment advisor for anti-fraud violations of the anti-fraud provisions of the Investment Advisers Act. The petitioner requested SEC review, arguing that the administrative proceedings were invalid, as the administrative law judge (ALJ) who decided his case was unconstitutionally appointed. ALJs are appointed by SEC staff in a manner that Lucia claimed violated the Appointments Clause under Article II, Section 2, Clause 2 of the Constitution. When the SEC ruled against Lucia, he appealed to the D.C. Circuit which denied the petition for review by a divided court, issuing a new decision affirming the SEC's decision as required under D.C. Circuit Rule 35(d).

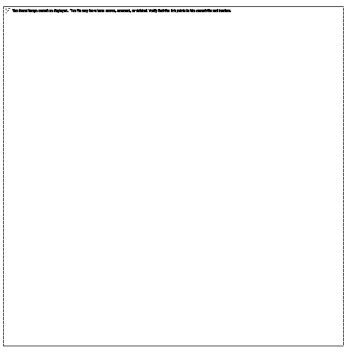
Kevin Muhlendorf of Wiley Rein and Professor Gregory Dolin of the University of Baltimore School of Law will join us to give their impressions of the oral argument of this important case.

Analyzing how EPA is Addressing "Secret Science"

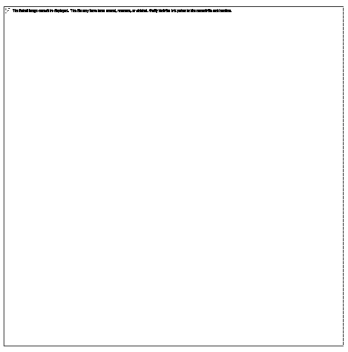
Regulator Transparency Project Teleforum
Tuesday, April 24, 2018
|
12:00 noon ET



Daren Bakst
Senior Research Fellow in Agricultural Policy
The Heritage Foundation



Dr. Richard B. Belzer
Associate Fellow
R Street Institute

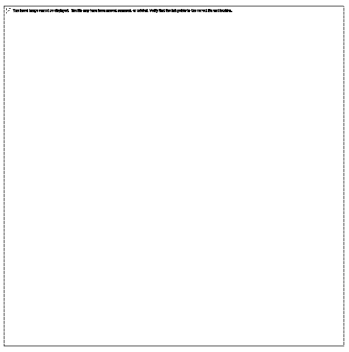


Moderator:
Devon Westhill
Director
Regulatory Transparency Project

EPA Administrator Scott Pruitt announced that his agency would no longer allow the use of "secret science" in developing federal regulations. Specifically, the agency will only use scientific studies to develop regulations when the data and methodology for those studies are made accessible to the public. Is there really a secret science or transparency problem that even needs to be addressed? If so, have there been attempts historically to correct the problem? What are the implications of excluding such studies? This presentation will provide background on this effort and discuss how transparency in government can be strengthened and better inform policymaking.

Courthouse Steps: *Trump v. Hawaii*

International & National Security Law Practice Group Teleforum
Wednesday, April 25, 2018 | 3:00 p.m. ET



Steven Giaier
Senior Counsel
House Committee on Homeland Security

On April 25, the Supreme Court will hear oral argument in *Trump v. Hawaii*, the latest iteration of Hawaii's challenge to President Trump's Executive Order suspending immigrant and nonimmigrant entry into the country by citizens of specific countries. While the original order banned entry of citizens from seven majority Muslim countries, it was superseded by the current order which affects citizens from other countries as well, such as Chad, North Korea and Venezuela. Steve Giaier attended oral argument and will join us to share his observations.

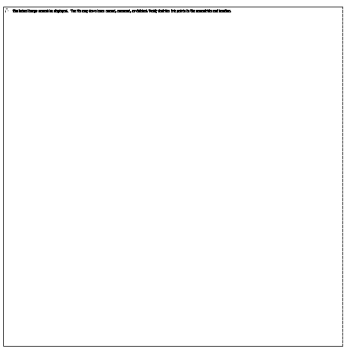
The Struggle to Rein In Shareholder Activism

Corporations, Securities & Antitrust Teleforum

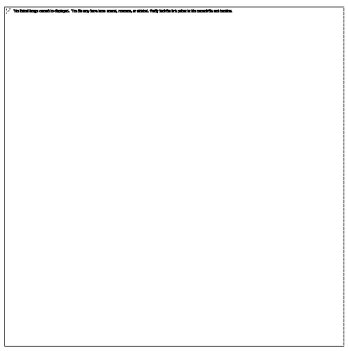
Thursday, April 26, 2018

|

2:00 p.m. ET



Jason A. Levine
Litigation Partner
Vinson & Elkins LLP



Lawrence Elbaum
Litigation Counsel
Vinson & Elkins LLP

For over a decade, shareholder activism has been on the rise, affecting an increasing number of publicly-traded companies. Essentially a re-brand of the 1980s-era "corporate raiders," today's activists are primarily institutional shareholders that seek to profit by forcing change at companies - whether by seeking board seats, pursuing managerial purges, or effectuating transactions for short-term gain. Shareholder activism is a battle for corporate control, accomplished largely through proxy fights and publicity campaigns. This Teleforum will provide an overview of the shareholder activism landscape, strategies and counter strategies to protect against activist tactics, and will assess the prospect for legal reforms intended to stem the flow of activist campaigns.

Courthouse Steps: *Animal Science Products v. Hebei Welcome Pharmaceutical*

Litigation Practice Group Teleforum

Friday, April 27, 2018 | *2:00 p.m. ET*

John Shu
Attorney and Legal Commentator

Animal Science Products, a U.S. company, sued Hebei Welsome Pharmaceutical Co., a Chinese company, for violating U.S. antitrust laws by coordinating prices and artificially decreasing supply. Hebei moved to dismiss the case, stating that they were acting according to Chinese law. The district court denied the dismissal, and the jury trial found in favor of Animal Science Products, ordering Hebei to pay them $147 million in damages.

Hebei appealed, and the circuit court reversed the district court's denial to dismiss. The circuit court reasoned that the district court had erred in not deferring to the Chinese government's interpretations of its laws, as the Chinese government had appeared in court to defend Hebei's actions.

John Shu will join us to discuss his perceptions of the oral argument in this important case.

Previously Recorded Calls

Antitrust Enforcement by State Attorney Generals

Corporations, Securities & Antitrust and Financial Services & E-Commerce Practice Group Teleforum

State Attorneys General often investigate antitrust violations - ranging from price fixing to anticompetitive mergers - in conjunction with the federal antitrust enforcement agencies (the U.S. Department of Justice and the Federal Trade Commission). But recently the nation's AGs have more frequently taken the lead, conducting their own investigations and initiating independent enforcement actions. Are these examples of state AGs merely utilizing their own statutory authority to protect their constituents? Are they filling a vacuum when federal authorities choose not to act? Or are they becoming the equivalent of national regulators? An experienced panel of antitrust practitioners and representatives from state AG offices will share their perspectives on the impact of increased antitrust enforcement by the state AGs and what businesses and their counsel need to understand about it.

[Listen]

The Role of Congressional Intelligence Committees

International & National Security Law Practice Groups and Article I Initiative Teleforum

Former Minority Staff Director and General Counsel for the House Permanent Select Committee on Intelligence Michael Bahar, Former General Counsel Michael Geffroy of the U.S. Senate Select Committee on Intelligence, and Former Minority Staff Director for the House Permanent Select Committee on Intelligence Heather Molino will join us to discuss the role of Congressional Intelligence Committees. How well are they able to discharge their duties in the present environment? Has the Russian investigation impeded their functionality? Are they able to provide effective oversight? What could be improved?

[Listen]

Preview: *Trump v. Hawaii*

International & National Security Law Practice Group Teleforum

On April 25, the Supreme Court will hear oral argument in *Trump v. Hawaii*, the latest iteration of Hawaii's challenge to President Trump's Executive Order suspending immigrant and nonimmigrant entry into the country by citizens of specific countries. While the original order banned entry of citizens from seven majority Muslim countries, it was superseded by the current order which affects citizens from other countries as well, such as Chad, North Korea and Venezuela. Ilya Somin and Josh Blackman will join us to preview the case.

[Listen]

Tenth Anniversary of *Heller*

Criminal Law & Procedure Practice Group Teleforum

This year marks the tenth anniversary of *Heller v. District of Columbia*. Before *Heller*, courts had split on whether the Second Amendment recognized an individual right to keep and bear arms or if that right was limited only to those citizens participating in organized militias. Justice Antonin Scalia, writing for the majority, held that the Second Amendment recognized a right of individuals to keep and bear arms for private self-defense. In the wake of *Heller*, most lower courts have rejected Second Amendment challenges to state and federal gun control laws. The decision, however, left many questions unanswered concerning the scope of the Second Amendment.

In this Telefoum, Professors Nelson Lund and Darrell Miller will debate the original meaning of the Second Amendment, whether *Heller* was correctly

decided, whether lower courts are faithfully applying *Heller*, and how *Heller* might apply to future legislation regarding the right to keep and bear arms.

[Listen]

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Message

From: Feeley, Drew (Robert) [Feeley.Drew@epa.gov]
Sent: 4/17/2018 2:51:04 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: FW: Reminder for Tomorrow's Event: Invitation to The Irreproducibility Crisis of Modern Science

ICYMI

From: Yamada, Richard (Yujiro)
Sent: Monday, April 16, 2018 11:39 AM
To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Subject: Fwd: Reminder for Tomorrow's Event: Invitation to The Irreproducibility Crisis of Modern Science

Sent from my iPhone

Begin forwarded message:

From: Angela Logomasini <Angela.Logomasini@cei.org>
Date: April 16, 2018 at 11:30:20 AM EDT
To: Angela Logomasini <Angela.Logomasini@cei.org>
Subject: Reminder for Tomorrow's Event: Invitation to The Irreproducibility Crisis of Modern Science

The National Association of Scholars will release an important new study on ***The Irreproducibility Crisis of Modern Science*** on Tuesday, April 17th. Please join us at CEI for a discussion by the authors, David Randall and Christopher Welser, at 4:30 PM on Tuesday, April 17th. NAS will have printed copies of the study for you. NAS President Peter Wood will also be at the event.

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Please respond to this e-mail if you would like to attend. Here are the details:

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to attend that event as well. Here is the link to Rsvp: https://www.eventbrite.com/e/launch-event-the-irreproducibility-crisis-of-modern-science-tickets-44647901074.

Angela Logomasini, Ph.D.
Senior Fellow
Competitive Enterprise Institute
1310 L Street NW, 7th Floor
Washington, DC 20005
Direct ph: (202) 331-2269
Websites: CEI.org and SafeChemicalPolicy.org

Message

From: Dunham, Sarah [Dunham.Sarah@epa.gov]
Sent: 5/2/2019 9:44:09 PM
To: Idsal, Anne [idsal.anne@epa.gov]; Woods, Clint [woods.clint@epa.gov]
CC: Gunning, Paul [Gunning.Paul@epa.gov]
Subject: Fwd: Third set of slides
Attachments: SectoralImpactsBriefingWehrum6_12_18.pptx; ATT00001.htm; AQImpactsBriefingWehrum6_26_18AC.pptx; ATT00002.htm; Briefing for Bill Wehrum Federal Climate Research Process.docx; ATT00003.htm; 1.5SR for Bill W - 111518.docx; ATT00004.htm; OceanHeatResplandy_AC4.pptx; ATT00005.htm; TABLE OF CONTENTS.docx; ATT00006.htm

9. June 12 Sectoral Impacts
10. June 26 Air Quality
11. July 10 Climate Science and Governance
12. November 26 IPCC 1.5 and NCA4 plus ocean heat

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TAB4: Overview Review and Discussion (word files), 4/3/18

TAB5: Observations and Indicators, 4/16/18

TAB6: U.S. Global Change Research Program (USGCRP) and National Climate Assessment (NCA), 5/2/18

TAB7: Computer Modeling and Climate, 6/5/18

TAB8: Sectoral Impacts, 6/12/18

TAB9: Air Quality Impacts, 6/26/18

TAB10: IPCC Special Report Summary on Global Warming of 1.5^{o}C, 11/28/18

TAB11: USGCRP & NCA, 7/10/18 & 11/28/18

TAB12: NCA Summaries for Policymakers

Climate science briefings presented to Assistant Administrator William Wehrum in 2018. Note that some presentations may be out of date (e.g., the NCA briefing was given before the final version of the NCA was released in November of 2018)

Message

From: Tom Pyle [info=americanenergyalliance.org@mail78.atl111.rsgsv.net]
on behalf of Tom Pyle [info@americanenergyalliance.org]
Sent: 6/8/2018 2:01:25 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: [SPAM-Sender] Let's make a deal

View this email in your browser

MORNING ENERGY NEWS | 6.8.2018

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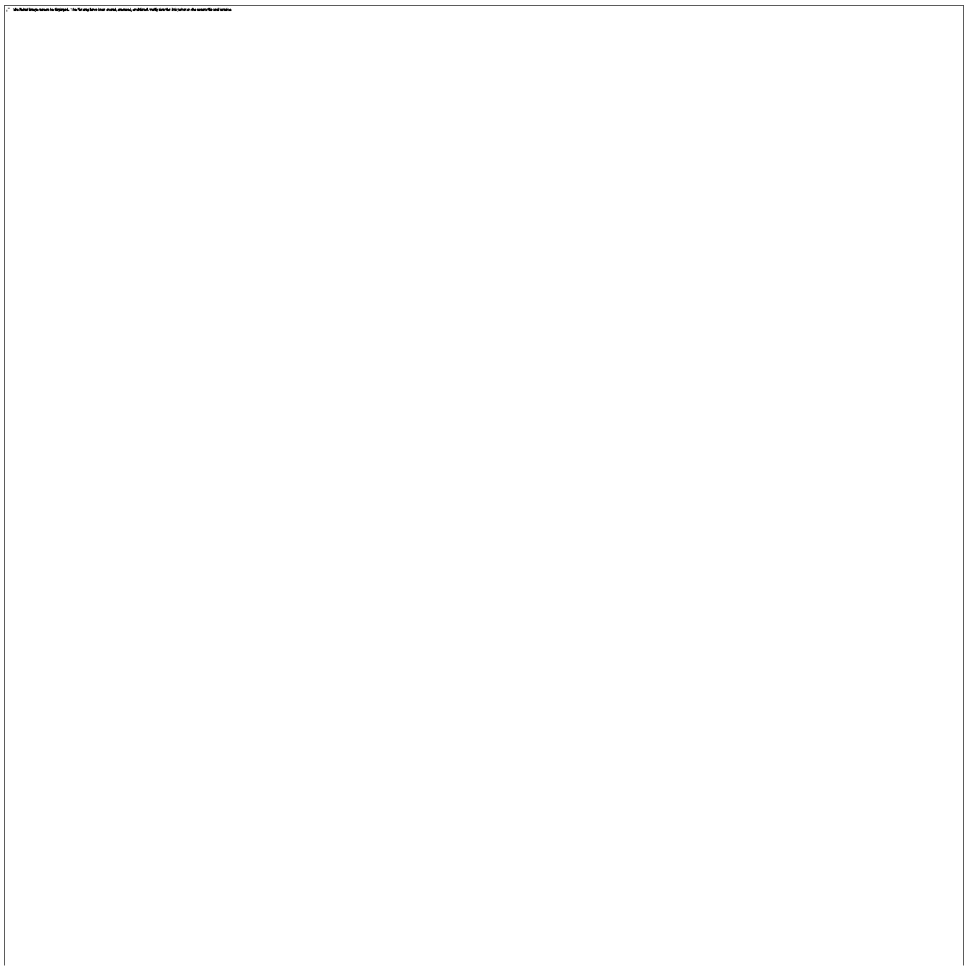
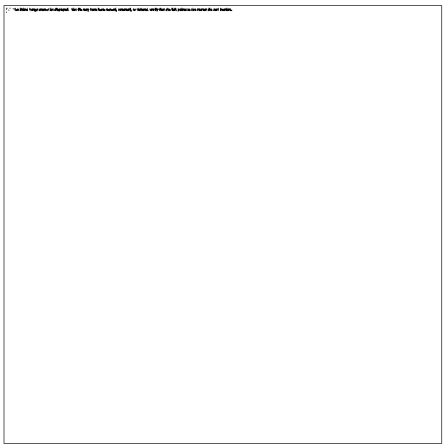
AP News (6/7/18) reports: "Colorado's largest electricity provider said Wednesday it wants to retire two coal-fired units a decade early and nearly double the share of power it gets from renewable sources. Xcel Energy said the changes would reduce its carbon pollution in the state by 60 percent and increase its share of renewable energy to almost 55 percent, up from about 28 percent now. Xcel said the plan would save consumers $215 million by 2054, citing the 'historically low' cost of renewables. Colorado regulators would have to approve the proposals before they go into effect...The company said building and buying the natural gas plants and solar and wind farms will cost $2.5 billion."





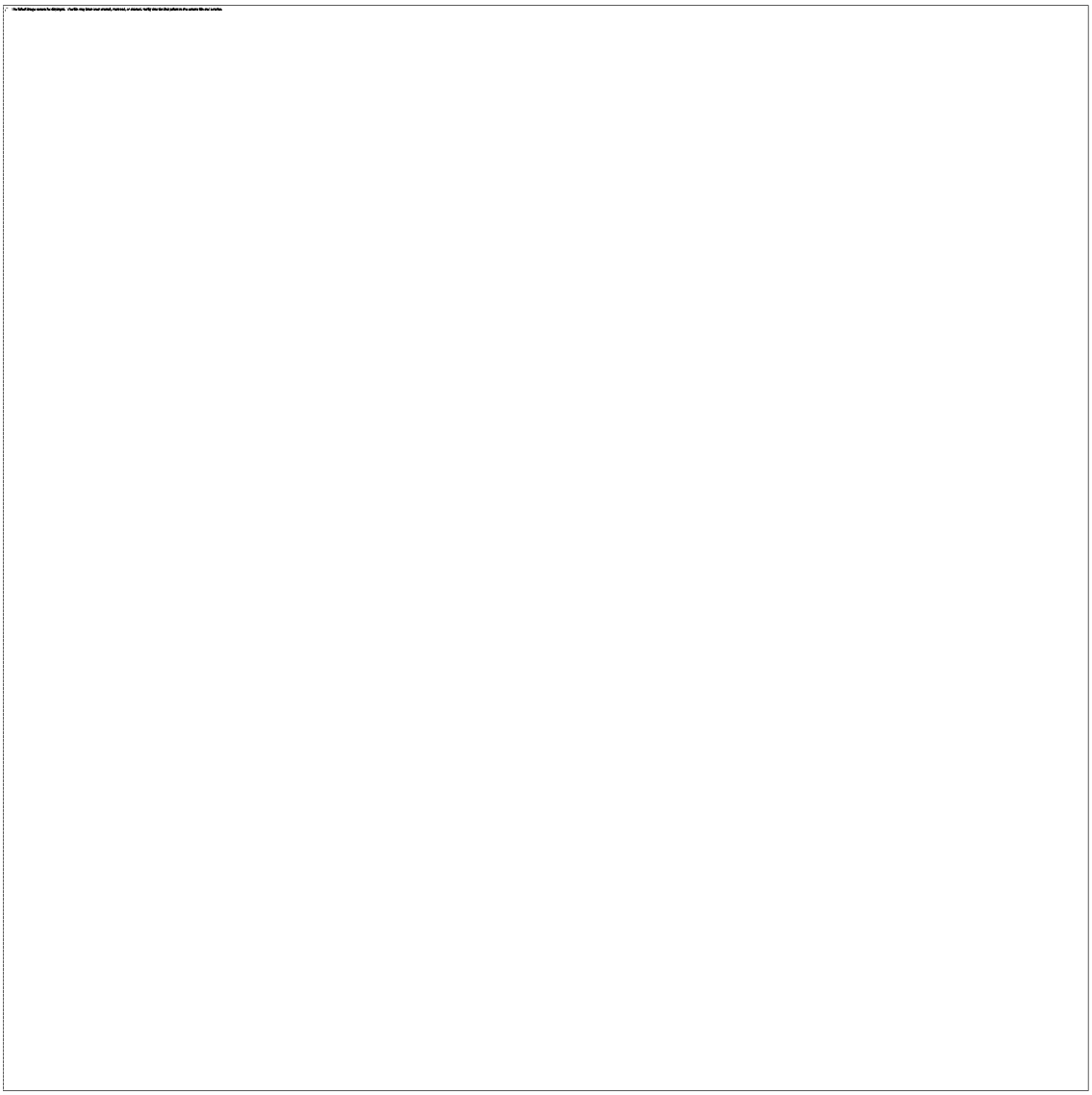
"Punishing regulations like the so-called 'Clean Power Plan' would have cost Wyoming's energy workers their jobs and devastated communities throughout the state. Now, the Trump administration is taking important steps to make sure the agency can no longer abuse the cost-benefit analysis process."

– John Barrasso, R-Wyo.

Let's think about this for a second, Ted. Why would someone put a guarantee on a box?

Reuters (6/8/18) reports: "An oversupply of cheap Chinese-made panels that had been destined for domestic projects will help boost demand for solar in

other countries and sop up some of the demand lost in China, IHS said. But a drop in prices will leave manufacturers with razor-thin margins as they seek to unload their products. 'There will be a stressful environment for pricing in the near term,' Barati said. 'Something like this certainly has global ripples.' In April, IHS Markit forecast 2018 global installations would hit a record 113 GW, with 53 GW coming from China alone. China is also the world's largest producer of solar panels. But the Asian nation last week said it would not build any more solar power stations in 2018 and cut its feed-in tariff subsidy, which guarantees a certain price for power."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For some reason I find myself reminiscing fondly about Saint John Paul the Great more and more these days.

National Catholic Reporter (6/5/18) reports: "Pope Francis and Vatican officials plan to meet with some of the world's leading oil executives this week, in what appears as an effort to lobby the industry to take the dangers of climate change more seriously. While most details about the encounter are being kept secret in hopes of facilitating frank dialogue among the participants, a weekly Vatican media planning calendar indicates the discussion will likely center on the need to transition the global energy market away from dependence on fossil fuels."

More bad news for the alarmists.

Nature (6/7/18) reports: "Siphoning carbon dioxide (CO_2) from the atmosphere could be more than an expensive last-ditch strategy for averting climate catastrophe. A detailed economic analysis published on 7 June suggests that the geoengineering technology is inching closer to commercial viability."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance

Myron Ebell, Americans for Competitive Enterprise, Competitive Enterprise Institute

Phil Kerpen, American Commitment

William O'Keefe, George C. Marshall Institute

Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity

Joe Bast, Heartland Institute

David Ridenour, National Center for Public Policy Research

Michael Needham, Heritage Action for America

Grover Norquist, Americans for Tax Reform

Sabrina Schaeffer, Independent Women's Forum

George Landrith, Frontiers of Freedom

Thomas A. Schatz, Citizens Against Government Waste

Richard Manning, Americans for Limited Government

Adam Brandon, FreedomWorks

Rich Collins, Positive Growth Alliance

Craig Richardson, E&E Legal

The Honorable George Allen, American Energy Freedom Center

Dick Patten, American Business Defense Council

Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↓ $65.78
Natural Gas: ↓ $2.88
Gasoline: $2.94
Diesel: ↓ $3.20
Heating Oil: ↓ $217.38
Brent Crude Oil: ↓ $76.75
US Rig Count: 1107

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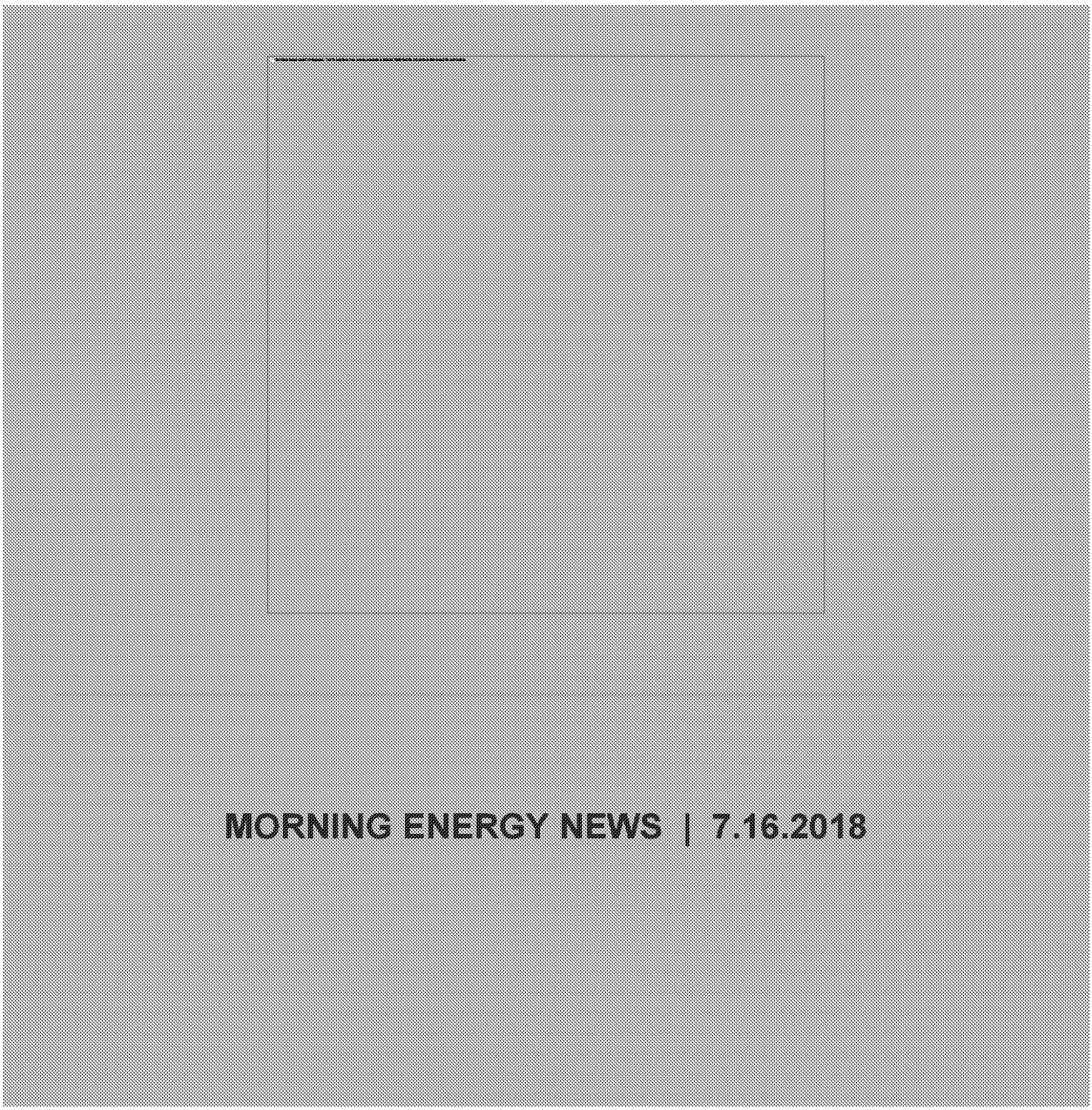

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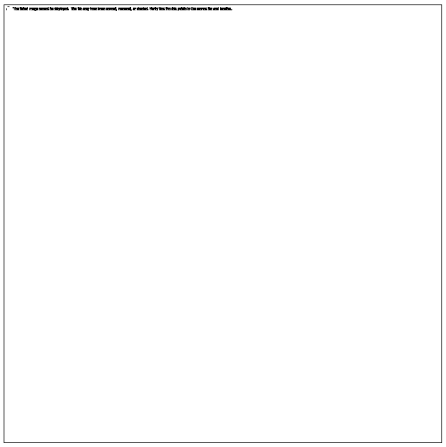
It's time for Members of Congress to pin their colors to the mast.

Politico Pro (7/13/18) reports: "The House Rules Committee will meet Tuesday to tee up chamber consideration of a resolution, H. Con. Res. 119 (115), arguing a carbon tax would be 'detrimental' to the U.S. economy and 'not in the best interest' of the country, according to a notice. Nineteen conservative groups, including the Competitive Enterprise Institute, American Energy Alliance and Americans for Tax Reform, sent House leadership a letter earlier this week urging them to take up the resolution. The non-binding resolution is led by Majority Whip Steve Scalise and may be an interesting vote for members of the Climate Solutions Caucus. That bipartisan group's ranks have swelled to more than 80 lawmakers, but members have yet to weigh in on specific solutions for how to address climate change."

Read the letter we delivered to Congress below.

American Energy Alliance (7/9/18) letter: "As we approach the 2018 midterm election, American voters deserve to know whether their elected Representatives support the implementation of a new tax on the energy they rely on every single day. Now is the time for Congress to make its voice heard on this important issue."



"There is no reason that Ottawa can't figure out what [the economic impact] would look like if it imposes a carbon tax, because if a carbon tax hits Saskatchewan, it's coming from Ottawa. It's not coming from Regina; it's coming from Ottawa. They know that; we

know that; everybody knows that. If they don't have all of the math done, they need to get it done. Because if [there's going to be a tax], it's going to come from Ottawa."

– Todd Mackay, Canadian Taxpayers Federation

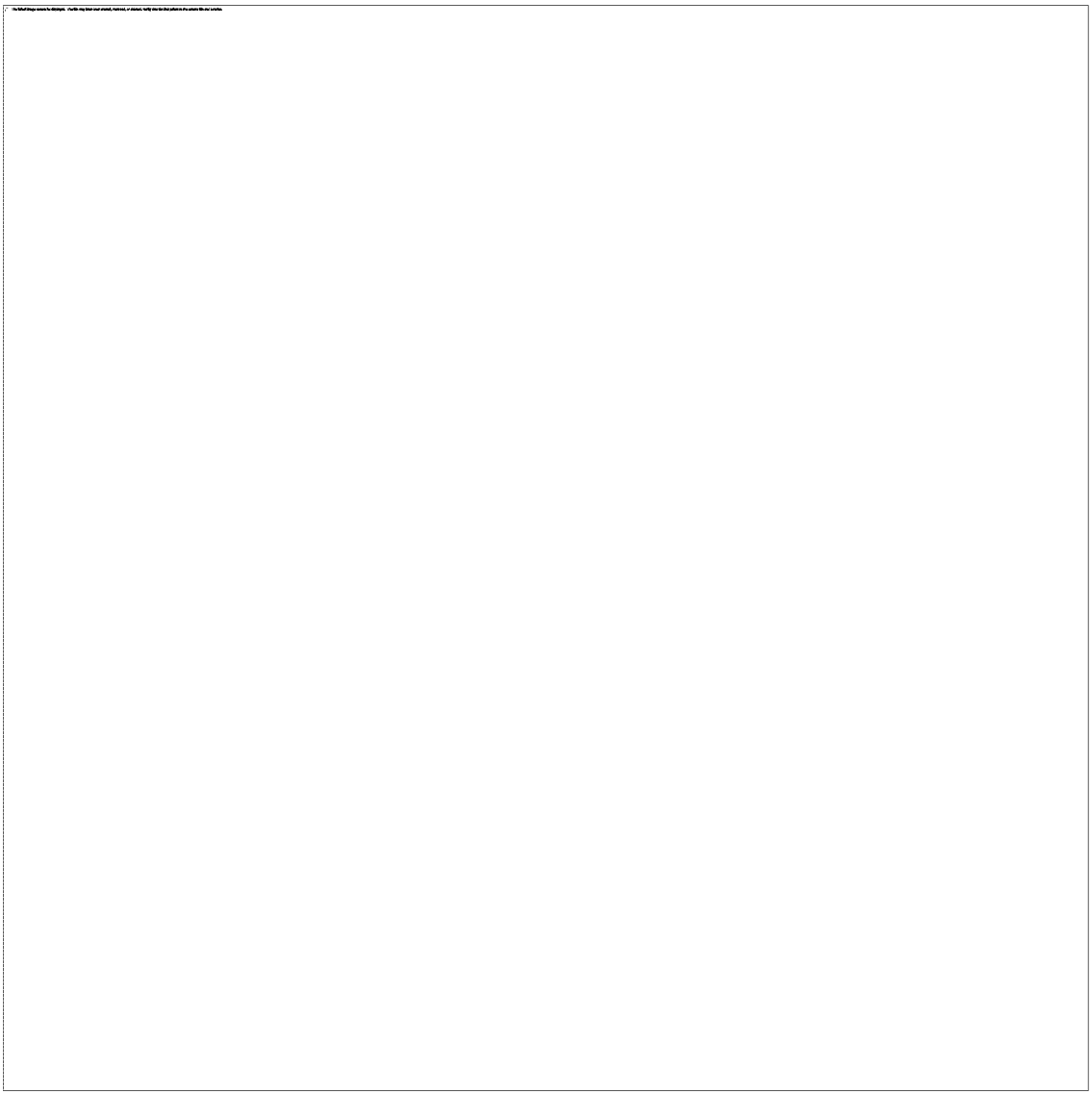
The don't know if it will be wetter or drier, but they know they need to take your money to solve it.

New York Times (7/15/18) feature: "(F)loodplain restoration is increasingly seen as a way of coping with the future — one of human-induced climate change. The reclaimed lands will flood more readily, and that will help protect cities and towns from the more frequent and larger inundations that scientists say are

likely as California continues to warm...Researchers say it is unclear whether climate change will make California drier or wetter on average. What is more certain is that the state will increasingly whipsaw between extremes, with drier dry years, wetter wet ones and a rising frequency of intense periods of precipitation."

Swamp monsters suck the fun out of America's pastime.

Twitter (7/15/18):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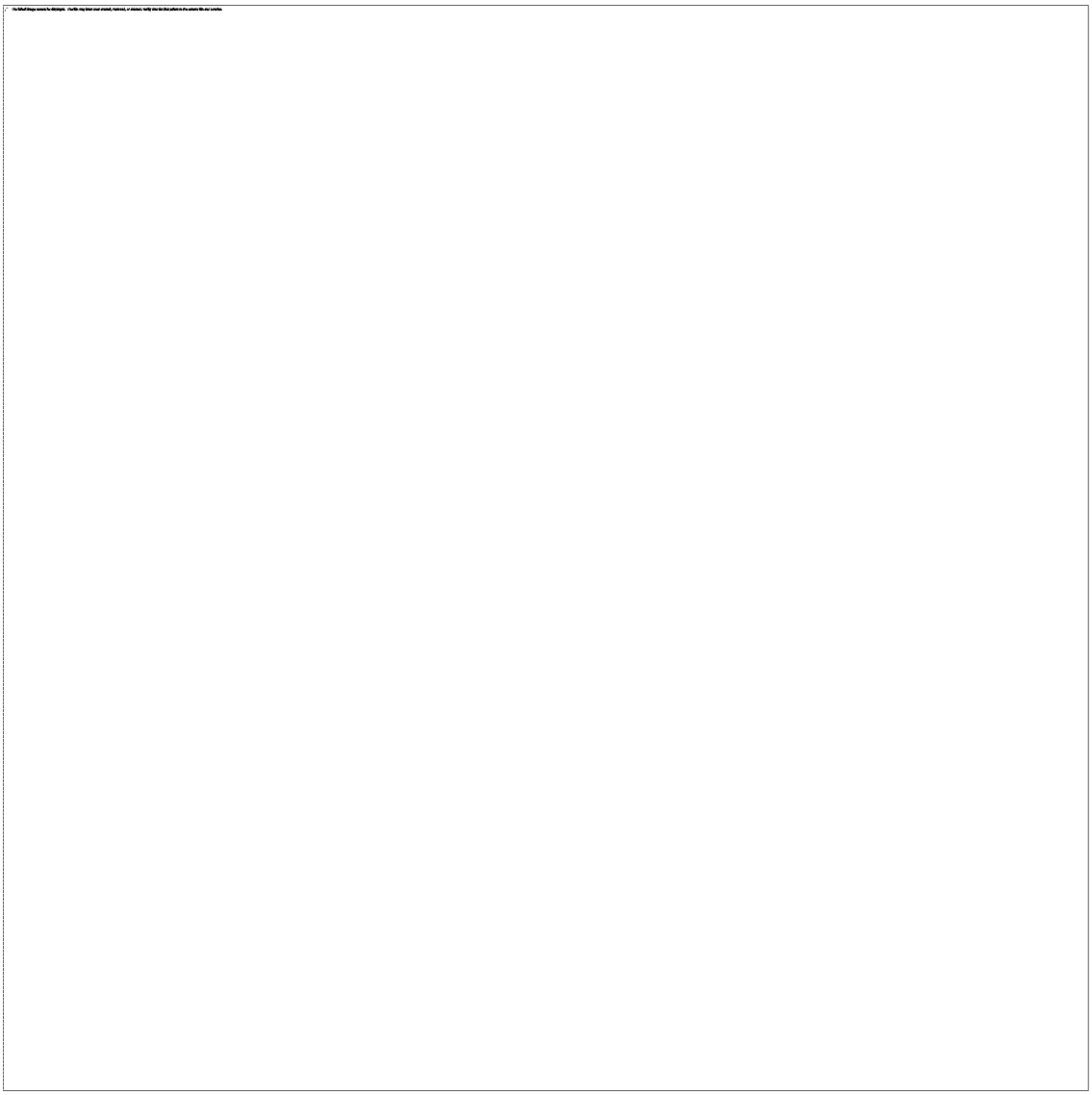
A wrong made right.

London (Ontario) Free Press (7/13/18) reports: "Ontario's new Progressive Conservative government is cancelling 758 renewable energy contracts, including one for a massive wind farm near London where area residents voted overwhelmingly against wind turbines but had them imposed on them by the former Liberal government. The Tory government says the cancellations are part of its effort to reduce Ontarians electricity bills."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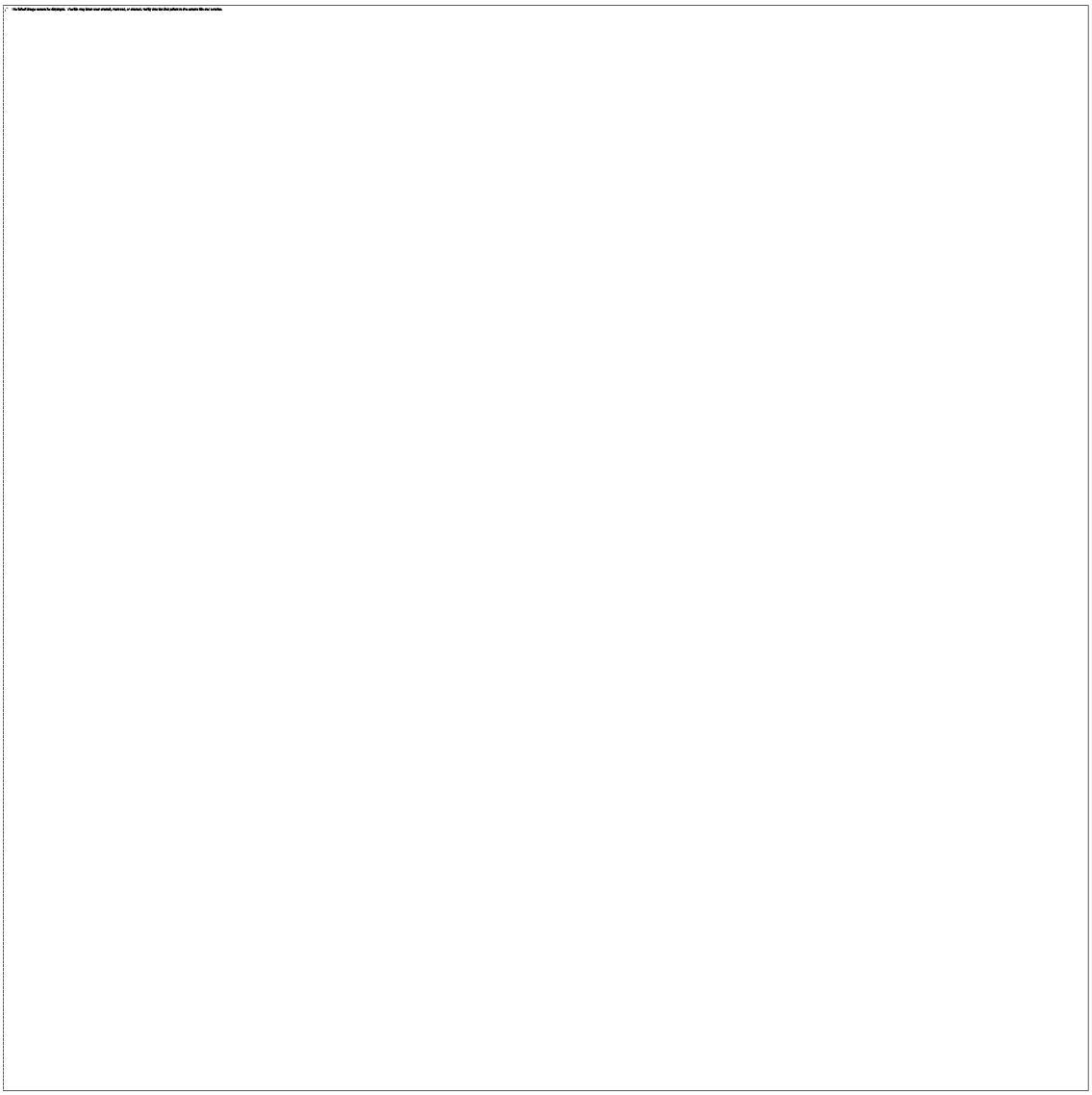
He is who we thought he was.

Twitter (7/13/18):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Energy Markets

WTI Crude Oil: ↓ $69.45
Natural Gas: ↑ $2.75
Gasoline: ↑ $2.88
Diesel: $3.17
Heating Oil: ↓ $208.74
Brent Crude Oil: ↓ $73.30
US Rig Count: ↑ 1130

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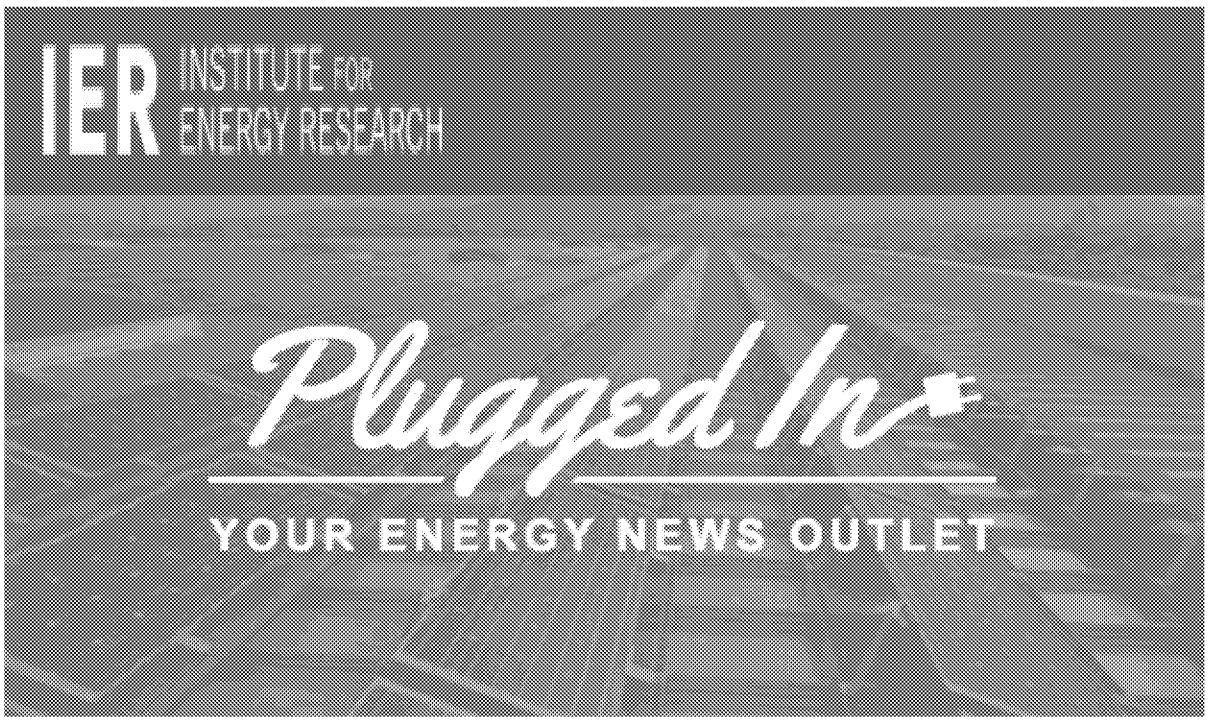

SURGING

Plugged In is coming back online as a weekly email newsletter highlighting the work of the Institute for Energy Research and featuring the recently released '***Plugged In***' podcast.

IER is also proud to announce the launch of a new website. Stay up to date with the latest content by visiting www.instituteforenergyresearch.org.

If you'd like to reach us at any time with feedback or ideas, please email info@ierdc.org.

FROM THE STUDIOS

What's happening with the CAFE mandate?

This week the policy team sits down to discuss upcoming changes to the Corporate Average Fuel Economy (CAFE) mandate, including the possible removal of California's waiver and what it means for federalism, consumers and players in the industry. Don't miss episode #2 of the '*Plugged in*' podcast: IER experts talk CAFE changes.

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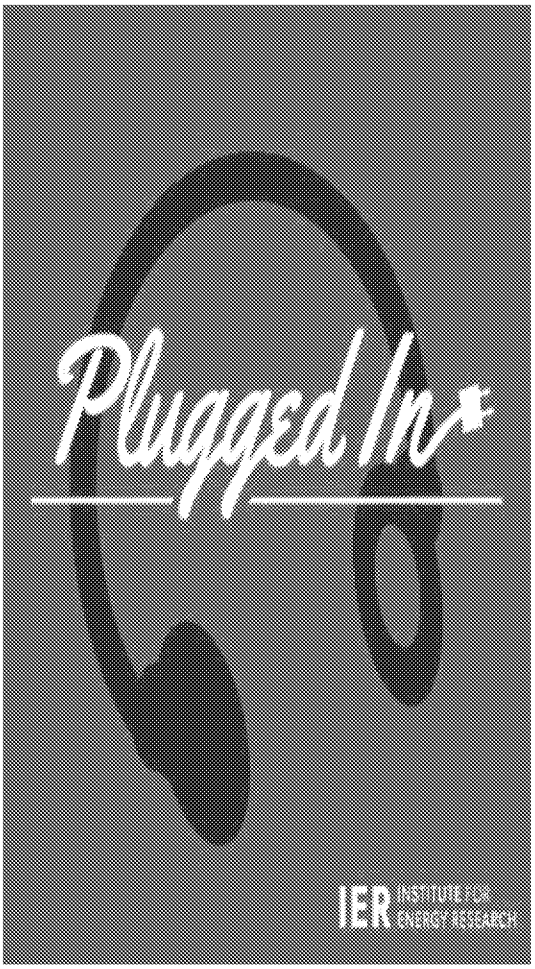

Latest Analysis

- No, Working Families Won't Benefit from a Carbon Tax
- Niskanen Center's Jerry Taylor Rebuts Himself
- In 2017, The U.S. Had the Largest Reduction in Carbon Dioxide Emissions in the World

THE WIRE

IER News Highlights

- IER lawsuit against the State Dept. covered by The Daily Caller
- President Tom Pyle quoted in Bloomberg on EPA regulations
- IER cited by The Heartland Institute

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"It is critical to our national security and our energy security to have a safe and robust pipeline system." –Secretary Elaine Chao, at CPAC 365: Bismarck

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Subject: The public deserves answers.

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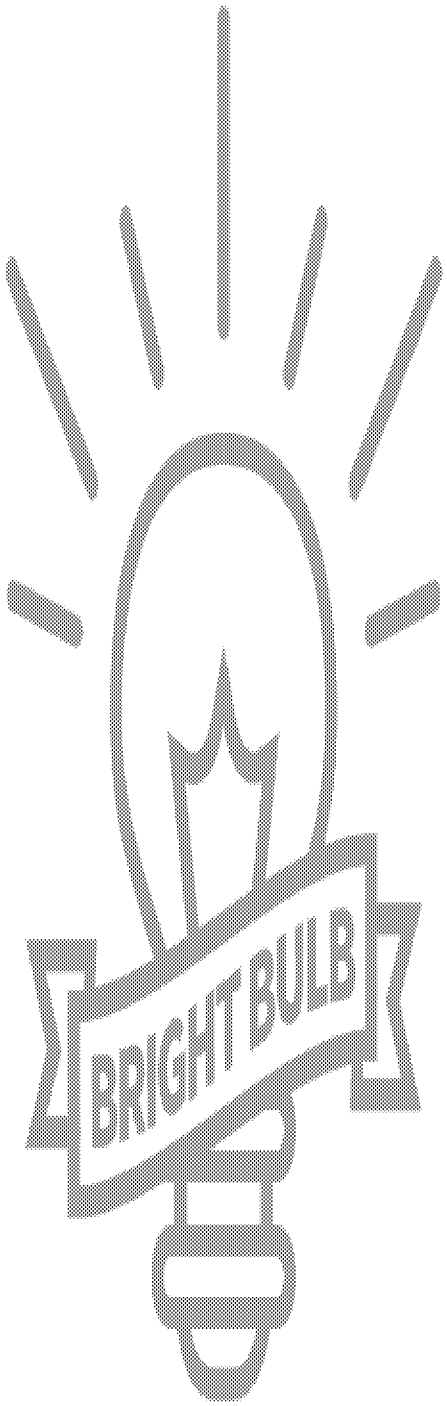
Why do Democrats want to increase energy costs?

The Daily Caller (4/23/19) reports: "Democratic presidential candidates are lining up behind energy policies a new study found would significantly make everyday life more expensive. Mandating even a small increase in renewable energy use 'leads to substantial increases in electricity prices that mirror the program's increasing stringency over time,' according to a new study by University of Chicago economists. The study comes as 14 of 18 Democrats running for president in 2020 come out in support of a national renewable energy mandate or the Green New Deal, which calls for 'net-zero' greenhouse gas emissions within 10 years. The Green New Deal, however, is a much more expansive policy that involves all sectors of the economy and expanding the welfare state...'The estimates indicate that in the 7th year after passage average retail electricity prices are 1.3 cents per kWh or 11% higher, totaling

about $30 billion in the RPS states,' the study found. 'And, 12 years later they are 2.0 cents, or 17%, higher,' the study found."



"There's no doubt that the innovations of a free-marketplace yield monumental environmental benefits. But alas, the green movement remains devoted to big government solutions that are as flawed as the former Soviet Union's collapsed economic system."

– Angela Logomasini, *Competitive Enterprise Institute*

Hay Hay, Hoe Hoe, this propaganda has got to go.

YouTube (11/18/18).

I'd like to see what the 'global wealth gap' would be without fossil fuels.

New York Times (4/22/19) reports: "Climate change creates winners and losers. Norway is among the winners; Nigeria among the losers. Those are the stark findings of a peer-reviewed paper by two Stanford University professors who have tried to quantify the impact of rising greenhouse gas emissions on global inequality. It was published Monday in Proceedings of the National Academy of Sciences. Global temperatures have risen nearly 1 degree Celsius, or 1.8 degrees Fahrenheit, since the start of the industrial age, and the study was aimed at quantifying what effect that increase has had on national economies and the global wealth gap. Poor countries lost out, while rich countries, especially those who have racked up a lot of emissions over the last 50 years, the study found, have 'benefited from global warming.' Inequality among nations, which has come down a lot in recent decades, would have declined far faster, it concluded, had climate change not been in the mix."

Didn't California hear about the outcome of Colorado's setback measure?

California Globe (4/22/19) reports: "California was the fourth-largest producer of crude oil among the 50 states in 2017, after Texas, North Dakota, and Alaska, and, as of January 2018, third in oil refining capacity after Texas and Louisiana. AB 345 by Assemblyman Al Muratsuchi (D-Torrance), would increase setback distance between oil production facilities and private and public property to 2,500 feet for every well, existing or planned in the state. According to the Western States Petroleum Association and the California Independent Petroleum Association, this bill, if passed, would effectively end oil production in many parts of the state and threaten the future of production IN ALL PARTS OF THE STATE, for example: 87% of all wells in the City of Los Angeles would be shut in; 66% of the well in Los Angeles County would be shut in; Thousands of wells in Kern County will be shut in. AB 345 creates a 2,500 foot setback requirement between any oil or gas well or facility and any residence, school, playground, hospital, or health clinic, and, further, gives counties and cities the power to require even greater setbacks. While AB 345 claims to limit its effects to wells drilled after January 1, 2020, its details indicate it could be ultimately be applied to all wells, new or existing, effectively ending most, if not all, oil production in Santa Barbara County."

All I see is dollar signs.

E&E News (4/23/19) reports: "The rise of electric vehicles could bring in as much as $3 billion to $10 billion over the next decade for the nation's large utilities, according to a new estimate from Boston Consulting Group Inc. (BCG). By 2030, about 20% to 30% of new cars sold will be plug-in hybrids and battery EVs, said the consultancy, in addition to 7% to 12% of all cars and trucks. That explosion of EVs on the roadways will give an opening for utilities, which have found it harder in recent years to convince regulators of the need for new infrastructure — the main source of utility profits...For each new car plugged in, utilities will have to upgrade anywhere from $1,700 to $5,800 worth of transmission and distribution infrastructure, the analysis found. Apart from transmission and distribution upgrades, utilities could bring in cash by offering rebates and promotions, building out chargers, and undertaking other transportation electrification programs under the auspices of regulators."

Energy Markets

WTI Crude Oil: ↓ $65.97
Natural Gas: ↑ $2.47
Gasoline: ↑ $2.86
Diesel: ↑ $3.08
Heating Oil: ↓ $211.17
Brent Crude Oil: ↓ $74.42
US Rig Count: ↑ 1048

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Subject: Teleforum Starting Now: Courthouse Steps Oral Argument: Department of Commerce v. New York: Citizenship and the Census

April 23, 2019

Teleforum Starting NOW

Courthouse Steps Oral Argument: *Department of Commerce v. New York*: Citizenship and the Census

Federalism & Separation of Powers Practice Group

Tuesday, April 23, 2019 | 1:00 p.m. ET

Dr. John S. Baker, Jr.
Professor Emeritus
Paul M. Hebert Law Center

Mr. Kenneth A. Klukowski
Senior Fellow
American Civil Rights Union

Louisiana State University

On April 23, the Supreme Court will hear oral arguments in *Department of Commerce v. New York*, the legal challenge arising from Commerce Secretary Wilbur Ross's decision to ask about the citizenship of census respondents. The case presents three questions: First, whether the 2020 Decennial Census can ask regarding each person counted at each residential address in the nation whether that person is a U.S. citizen. Second, whether district courts in an Administrative Procedure Act (APA) can order discovery beyond the administrative record to examine a Cabinet officers' decision-making. And third, whether adding a question on citizenship violates the Constitution's Enumeration Clause.

Citizenship is not a novel question for decennial census activities. It was first asked in 1820, and was most recently asked in 1950. However, the district court in this case issued a 270-plus page decision holding that the question on the 2020 census was illegal. An appeal of that decision was pending before the U.S. Court of Appeals for the Second Circuit when the justices granted certiorari before judgment, the first time doing so in many years. This was likely motivated in part by the federal government's assertion that census forms must be finalized before July 2019 to properly carry out the 2020 census.

The implications of this case are far-reaching. The federal government maintains a database with the residences of all legal aliens in this country, so cross-referencing those with census forms including citizenship could in theory reveal the whereabouts of most illegal aliens in the United States, assuming potential legal impediments to sharing that information could be resolved. This also could be a significant case on discovery involving high-level government officials, and also of APA litigation.

Speaker Biographies

Dr. John S. Baker, Jr.

Dr. John Baker is a Visiting Professor at Georgetown Law School and at Peking University School of Transnational Law. He has been a Visiting Fellow at Oriel College, the University of Oxford (2012-2014). He is Professor Emeritus of Law, and previously the Dale E. Bennett Professor of Law, at Louisiana State University Law School. He was an adjunct Fellow at the Heritage Foundation (Spring, 2008) and a Distinguished Scholar at the Catholic University of America Law School (2011-12). He has also taught at Tulane Law School, George Mason Law School, Pepperdine Law School, New York Law School, Hong Kong University, and the

University of Dallas, School of Management He has been a Visiting Professor at the University of Lyon III (France) (1999-2011) and at the Universidad de los Andes, Chile, where he was a Fulbright Specialist in 2012. He has lectured at universities and research institutes in Argentina, Austria, Brazil, China, Croatia, Peru, Slovenia, Taiwan, Vietnam, and the Philippines, where he was a Fulbright Fellow (2006).

Dr. Baker received his J.D., with honors, from the University of Michigan Law School and his B.A., magna cum laude, from the University of Dallas. He also earned a Ph.D. in Political Thought from the University of London.

Dr. Baker has taught over a dozen different subjects, mostly in the area of public law. His main areas of interest are Constitutional Law (particularly federalism and separation of powers), Criminal Law, Anti-Terrorism Law, International Law, Health Care Law, Mediation, and Comparative Law.

In addition to law review articles and book chapters, Dr. Baker's academic publications include: *Hall's Criminal Law: Cases and Materials* (with Benson, Force and George; 5th ed. Michie, 1993); *An Introduction to the Law of the United States* (ed. with Levasseur; University Press of America, 1992). He has also published on Forbes.com, FoxNews.com, in *The Washington Times*, and a number of times in *The Wall Street Journal*.

He argues in federal court, including two oral arguments in the U.S. Supreme Court. For years, he taught courses for the Federalist Society on separation of powers with the late Supreme Court Justice Antonin Scalia. In September, 2016, he taught a Supreme Court seminar in China with Justice Samuel Alito.

Following law school, he served as a law clerk in federal district court and as an assistant district attorney in New Orleans before joining LSU in 1975. While a professor, he has been as a consultant to USAID, USIA (now part of the State Department), the Justice Department, the U.S. Senate Judiciary Subcommittee on Separation of Powers, and the Office of Planning in the White House. He served on an ABA Task Force which issued the report, The Federalization of Crime (1998) and later as a consultant to the "Bi-Partisan Task Force on the Over-federalization of Crime" (2012-2014) created by the U.S. House Judiciary Subcommittee on Crime.

Dr. Baker was a co-founder of the first iteration (1995) of Stratfor Inc., a global intelligence agency. He co-authored its first book: *The Intelligence Edge* (with Friedman, Friedman and Chapman; Crown Books/Random House 1997).

Kenneth A. Klukowski

Ken Klukowski served as team leader for the Constitutional Rights Team on the Presidential Transition Team of President Donald J. Trump, and is currently general counsel of the American Civil Rights Union, senior counsel and director of strategic affairs at First Liberty Institute, and senior legal editor for Breitbart News Network. He litigates constitutional cases in the federal judiciary, authors amicus briefs for U.S. Supreme Court and federal appellate cases, and supervises media coverage of the nation's highest court and legal issues for a media outlet with over 75 million individual monthly readers. Mr. Klukowski has served as Special Deputy Attorney General of Indiana, and worked on faculty at Liberty University School of Law. His academic works have been published by journals such as the Federalist Society's *Harvard Journal of Law & Public Policy*, and his columns have appeared in the *Wall Street Journal* and other national publications. His amicus briefs and nine law review articles have been cited by various federal courts and top legal journals. He has participated in numerous Supreme Court cases, and lectured and debated at almost 100 law school events nationwide. Mr. Klukowski received his bachelor's degree from the University of Notre Dame, studied history at Arizona State University, earned his law degree from Scalia Law School at George Mason University, and served as a law clerk to Chief Judge Alice Batchelder on the U.S. Court of Appeals for the Sixth Circuit.

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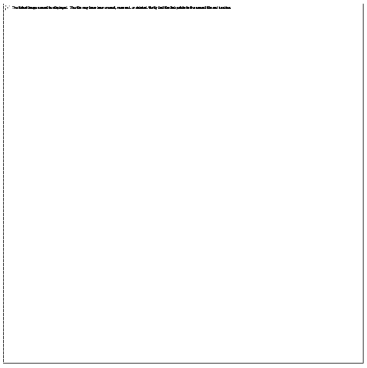

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The Federalist Society

April 23, 2019

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Federalism & Separation of Powers Practice Group

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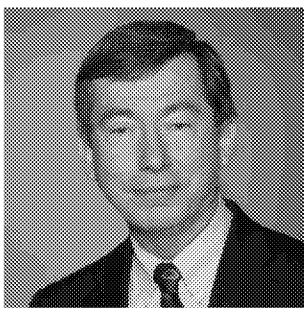

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Dr. Baker received his J.D., with honors, from the University of Michigan Law School and his B.A., magna cum laude, from the University of Dallas. He also earned a Ph.D. in Political Thought from the University of London.

Dr. Baker has taught over a dozen different subjects, mostly in the area of public law. His main areas of interest are Constitutional Law (particularly federalism and separation of powers), Criminal Law, Anti-Terrorism Law, International Law, Health Care Law, Mediation, and Comparative Law.

In addition to law review articles and book chapters, Dr. Baker's academic publications include: *Hall's Criminal Law: Cases and Materials* (with Benson, Force and George; 5th ed. Michie, 1993); *An Introduction to the Law of the United States* (ed. with Levasseur; University Press of America, 1992). He has also published on Forbes.com, FoxNews.com, in *The Washington Times*, and a number of times in *The Wall Street Journal*.

He argues in federal court, including two oral arguments in the U.S. Supreme Court. For years, he taught courses for the Federalist Society on separation of powers with the late Supreme Court Justice Antonin Scalia. In September, 2016, he taught a Supreme Court seminar in China with Justice Samuel Alito.

Following law school, he served as a law clerk in federal district court and as an assistant district attorney in New Orleans before joining LSU in 1975. While a professor, he has been as a consultant to USAID, USIA (now part of the State Department), the Justice Department, the U.S. Senate Judiciary Subcommittee on Separation of Powers, and the Office of Planning in the White House. He served on an ABA Task Force which issued the report, The Federalization of Crime (1998)

and later as a consultant to the "Bi-Partisan Task Force on the Over-federalization of Crime" (2012-2014) created by the U.S. House Judiciary Subcommittee on Crime.

Dr. Baker was a co-founder of the first iteration (1995) of Stratfor Inc., a global intelligence agency. He co-authored its first book: *The Intelligence Edge* (with Friedman, Friedman and Chapman; Crown Books/Random House 1997).

Kenneth A. Klukowski

Ken Klukowski served as team leader for the Constitutional Rights Team on the Presidential Transition Team of President Donald J. Trump, and is currently general counsel of the American Civil Rights Union, senior counsel and director of strategic affairs at First Liberty Institute, and senior legal editor for Breitbart News Network. He litigates constitutional cases in the federal judiciary, authors amicus briefs for U.S. Supreme Court and federal appellate cases, and supervises media coverage of the nation's highest court and legal issues for a media outlet with over 75 million individual monthly readers. Mr. Klukowski has served as Special Deputy Attorney General of Indiana, and worked on faculty at Liberty University School of Law. His academic works have been published by journals such as the Federalist Society's *Harvard Journal of Law & Public Policy*, and his columns have appeared in the *Wall Street Journal* and other national publications. His amicus briefs and nine law review articles have been cited by various federal courts and top legal journals. He has participated in numerous Supreme Court cases, and lectured and debated at almost 100 law school events nationwide. Mr. Klukowski received his bachelor's degree from the University of Notre Dame, studied history at Arizona State University, earned his law degree from Scalia Law School at George Mason University, and served as a law clerk to Chief Judge Alice Batchelder on the U.S. Court of Appeals for the Sixth Circuit.

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Appointment

From: Atkinson, Emily [Atkinson.Emily@epa.gov]
Sent: 5/23/2018 7:59:37 PM
To: Woods, Clint [woods.clint@epa.gov]; Shoaff, John [Shoaff.John@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Koerber, Mike [Koerber.Mike@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Cook, Leila [cook.leila@epa.gov]; Hengst, Benjamin [Hengst.Benjamin@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Harlow, David [harlow.david@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Schwab, Justin [Schwab.Justin@epa.gov]

Subject: SAB Meeting Discussion
Attachments: draft+SAB+meeting+agenda_5_16_18.pdf; SABWkGrpSpring2017Att+ABC.PDF; WG_Memo_Fall17_RegRevAttsABC.PDF; WkGrp_memo_2080-AA14_final_05132018.pdf; Best Practices for EPA Engagement with the Science Advisory Board March ....pdf; SAB Mtg Prep
Location: WJC-N 5400 + Video with RTP + Dial: Personal Phone / Ex. 6 Participant Code: Personal Phone / Ex. 6

Start: 5/24/2018 8:15:00 PM
End: 5/24/2018 9:00:00 PM
Show Time As: Tentative

Materials Attached

To: Wehrum, Bill; Woods, Clint; Shoaff, John; Tsirigotis, Peter; Koerber, Mike; Grundler, Christopher; Cook, Leila; Hengst, Benjamin; Dunham, Sarah; Harlow, David; Gunasekara, Mandy; Bolen, Brittany; Schwab, Justin

draft+SAB+meeti... | SABWkGrpSprin... | WG_Memo_Fall1... | WkGrp_memo_2... | Best Practices for EPA Engagemen... | SAB Mtg Prep

Message

From: Tom Pyle [info=americanenergyalliance.org@mail7.sea21.rsgsv.net]
on behalf of Tom Pyle [info@americanenergyalliance.org]
Sent: 8/6/2018 2:34:21 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: CAFE under new managament

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In the Pipeline

MORNING ENERGY NEWS | 8.6.2018

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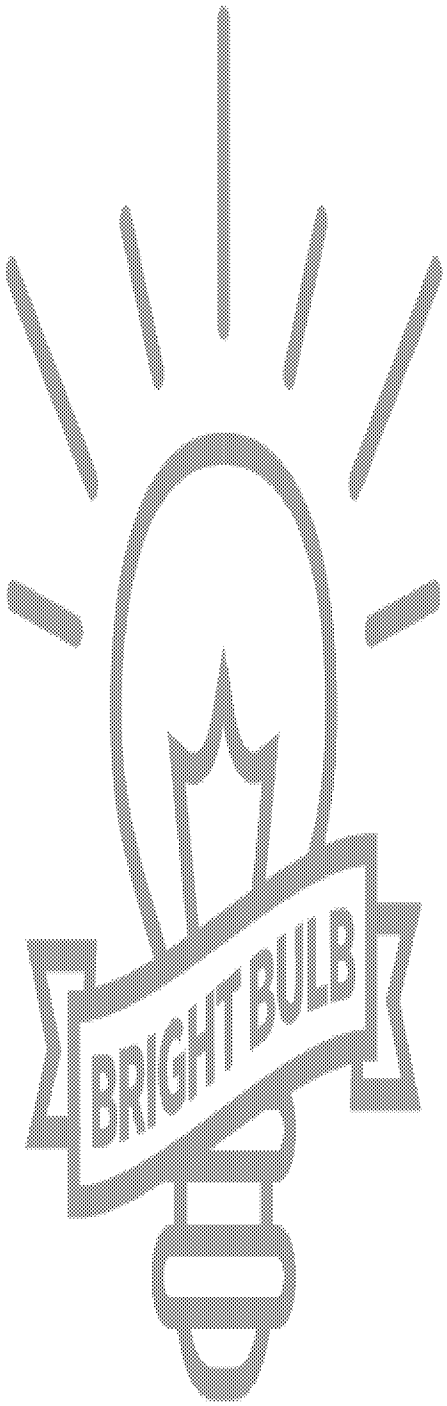
And the menu is getting a revamp.

Washington Post (8/2/18) reports: "The Trump administration announced plans Thursday to freeze fuel-efficiency requirements for the nation's cars and trucks through 2026 — a massive regulatory rollback likely to spur a legal battle with California and other states, as well as create potential upheaval in the nation's automotive market...'What started as a mandate in the mid-1970's to reduce foreign imports of oil morphed into a costly and unworkable environmental regulation thanks to bureaucrats in the previous administration and in Sacramento,' Thomas J. Pyle, president of the free-market American Energy Alliance advocacy group, said in a statement. 'President Trump should be commended for standing up for American consumers by reducing the regulatory burden placed unnecessarily on automakers.'"



"We don't need improved fuel economy for the sake of improved fuel economy. We are awash in oil and modern vehicles burn that fuel cleanly. The 1970s wants its crisis back."

– Steve Milloy, JunkScience.com

You own it now, Carlos.

Daily Caller (8/3/18) reports: "A moderate lawmaker running for re-election in a competitive district will be the target of a major attack ad initiative, a result of him introducing a carbon tax bill in Congress. American Energy Alliance (AEA), a political advocacy group, has launched a two-week, $75,000 ad campaign against Republican Rep. Carlos Curbelo...AEA says their digital ad campaign is meant to inform the public and hold lawmakers accountable for supporting 'destructive' energy taxes. 'By introducing H.R. 6463, Representative Carlos Curbelo has chosen to lend his name to a policy that would tax American families and small businesses, undermine our economic recovery, and increase government spending, while doing virtually nothing to improve the environment,' [AEA said in a statement]."

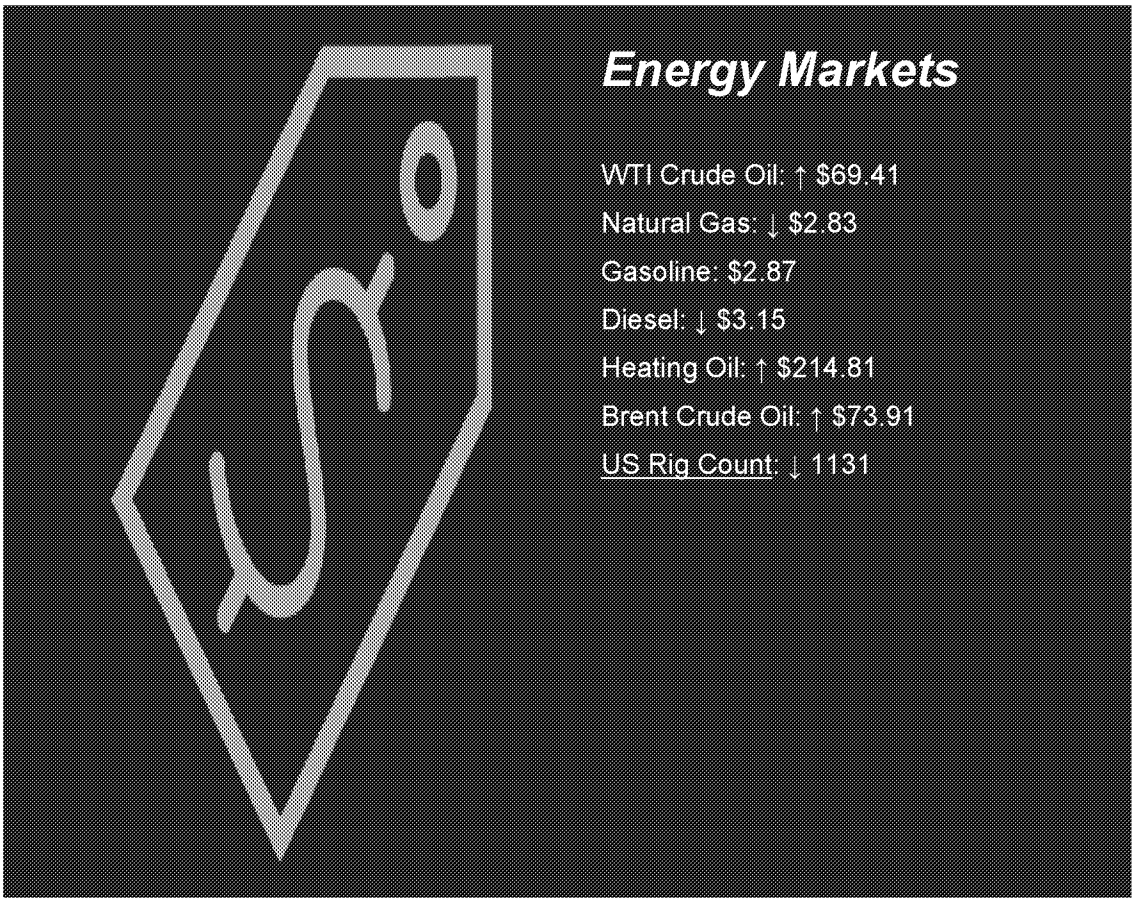
"Every practicable obstacle should be opposed to cabal, intrigue, and corruption."

Wall Street Journal (8/2/18) reports: "A major donor to President Trump agreed to pay $10 million to the president's then-personal attorney if he successfully helped obtain funding for a nuclear-power project, including a $5 billion loan from the U.S. government, according to people familiar with the matter. The donor, Franklin L. Haney, gave the contract to Trump attorney Michael Cohen in early April to assist his efforts to complete a pair of unfinished nuclear reactors in Alabama, known as the Bellefonte Nuclear Power Plant, these people said."

We're happy for XOM. Just think about how much they didn't have to shell out to the Clinton Foundation.

Wall Street Journal (8/3/18) reports: "Securities regulators dropped an investigation into whether Exxon Mobil Corp. misled investors about its accounting practices and the risks that climate change and greenhouse-gas regulations posed to its business. The Securities and Exchange Commission in

a Thursday letter informed Exxon that it closed the probe and decided against trying to penalize the energy giant over its disclosures and how it valued oil and gas assets."



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Message

From: American Energy Alliance [info=americanenergyalliance.org@mail151.atl21.rsgsv.net]
on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 8/3/2018 2:01:57 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Another one bites the dust...

View this email in your browser

In the Pipeline

MORNING ENERGY NEWS | 8.3.2018

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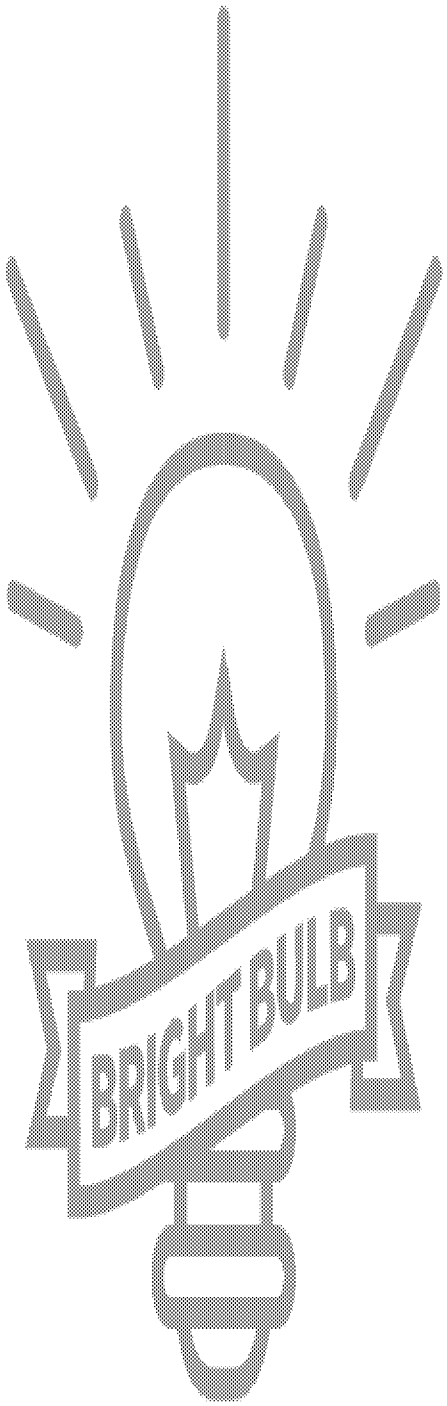
Just like that, poof, Trump tramples Obama's heavy-handed fuel mandate.

Washington Examiner (8/2/18) reports: "The Trump administration has finally come out with its proposal to reverse Obama-era regulations on vehicle emissions. This is welcome, for current standards make cars unnecessarily expensive and limit choices while producing scant environmental benefit. The Environmental Protection Agency and the National Highway Traffic Safety Administration, which jointly administer the CAFE (corporate average fuel economy) program, unveiled eight options for fuel-economy standards for vehicles made between 2021 and 2026. Of those, the agencies recommend freezing standards at 2020 levels through 2026 as the best option... The practical outcome will be to save car buyers about $2,340 per new vehicle, according to the administration."



"Reforming Corporate Average Fuel Economy (CAFE) standards is a huge tax cut for American car buyers, up to a $7,200 per vehicle. This unnecessary and hidden tax has burdened American consumers since the 1970s. CAFE standards have failed on every front"

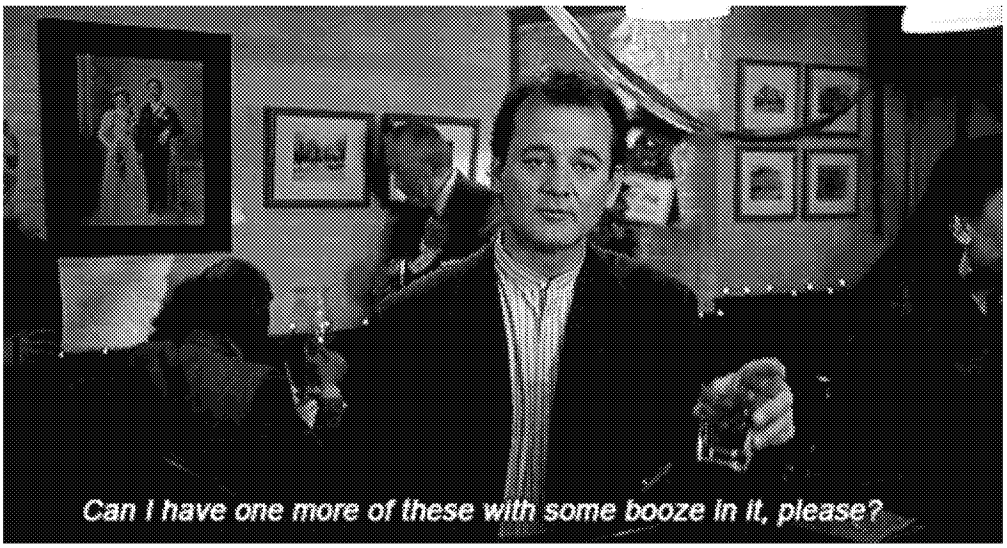
– Steve Forbes, *Americans for Hope, Growth and Opportunity*

Translation: made possible by fracking

Energy In Depth (7/31/18) reports: "The U.S. Environmental Protection Agency (EPA) released its annual 'Our Nation's Air' report on Tuesday, showing that air pollution declined 73 percent from 1970 to 2017 at the same time America's gross domestic product (GDP) increased 262 percent... EPA's rather cryptic acknowledgement of the shale gas revolution's role in continuing this progress was lacking to say the least. From the report: 'The U.S. leads the world in having clean air and a strong economy due to implementation of the Clean Air Act and technological advancements from American innovators…' Translation on that highlighted text: largely because of abundant natural gas, made possible by fracking."

Buffett gets a taxpayer funded payday

Washington Examiner (8/2/18) reports: "The electric buses keep breaking down, but Warren Buffett keeps getting paid because the Oracle from Omaha was smart enough to realize that the best investments are the ones backed by taxpayer dollars. During the Obama administration, Buffett invested $232 million in a Chinese company called Build Your Dreams, which specializes in building batteries for electric buses. And plenty of liberal cities have bought fleets of the pricey vehicles. Take Martha's Vineyard, Mass... With a $545,000 grant from the state, the Vineyard Transportation Authority bought six electric buses from BYD—two 30-foot short buses at a cost of $529,418 each, and four larger 35-foot buses at $729,000 each."



Hope your dishes don't get dirty when it's raining

Reuters (8/2/18) reports: "One day, the weather could drive your domestic schedule. Your dishwasher springs to life at the windiest time of day. The washing machine starts spinning when the sun beats down...Most utilities have long offered cheaper night-time tariffs, but new EU rules expected in 2020 will require them to provide more flexible options that encourage customers to use power during sunny or windy periods, at varied times of day or when businesses are shut at weekends."

"Carbon Tax" Curbelo won't get away with this one

AEA (8/2/18) announces: "American Energy Alliance has launched the first phase of a sustained anti-carbon tax initiative educating and encouraging citizens to hold their elected officials accountable for their support for destructive energy taxes... By introducing H.R. 6463, Representative Carlos Curbelo has chosen to lend his name to a policy that would tax American families and small businesses, undermine our economic recovery, and increase government spending, while doing virtually nothing to improve the environment.

Florida families deserve to know whether their elected representatives are willing to reject a new tax on the energy they rely on every single day. Unfortunately, Representative Curbelo is doing just the opposite."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance
Myron Ebell, Competitive Enterprise Institute
Phil Kerpen, American Commitment
William O'Keefe, George C. Marshall Institute
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Joe Bast, Heartland Institute
David Ridenour, National Center for Public Policy Research
Michael Needham, Heritage Action for America
Grover Norquist, Americans for Tax Reform
Sabrina Schaeffer, Independent Women's Forum
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Rich Collins, Positive Growth Alliance

Craig Richardson, E&E Legal

The Honorable George Allen, American Energy Freedom Center

Dick Patten, American Business Defense Council

Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute

Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↓ $68.78

Natural Gas: ↑ $2.82

Gasoline: $2.87

Diesel: $3.15

Heating Oil: ↓ $212.34

Brent Crude Oil: ↓ $73.20

US Rig Count: ↓ 1134

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From: Maisano, Frank [frank.maisano@bracewell.com]
Sent: 7/2/2018 6:49:22 PM
To: Maisano, Frank [frank.maisano@bracewell.com]
Subject: July 4th Week PRG Energy Update:Kigali, OPEC, Better Pavement Can Reduce Emissions

Friends,

Wasn't going to do an update today but decided to do a short one because of the crazy World Cup Games, the news about LeBron and – even more interesting – some policy news around the July 4th travel season, the Kigali amendment to the Montreal Protocol on HFC reductions and Trump tweets over OPEC.

How could you not like those FIFA World Cup games yesterday. Two games to Penalty Kicks where host Russia's Cinderella continued with a win over Spain after some brilliant saves by goalie Igor Akinfeev, who clinched the victory by stopping a shot with his foot. The brilliant goalie play continued in the second game when Croatia outlasted Denmark in shootout, Croatia now faces Russia in the quarterfinals. Brazil-Mexico now and Belgium-Japan this afternoon.

And apparently, LeBron James is headed to the Lakers for over $150M. Now, the question is who may join him? And don't forget the MLB All-Star game is here at Nationals Park on Tuesday, July 17th. Our friend, former AP reporter and baseball author/historian Fred Frommer will be all over the run up to the game. Frommer, author of You Gotta Have Heart, a history of DC baseball history, starts this Sunday at noon at *The Farm*, a rooftop building outside Nats Park, where former Washington Senators PA announcer Phil Hochberg chats about the four All-Star Games DC hosted in the 20th Century. Then next Tuesday July 11th at 6:45 p.m., Fred will be at the Smithsonian's S. Dillon Ripley Center with Hochberg and Gregory McCarthy of the Nats, for a night of baseball history. Finally, the night before the All-Star Game July 16th, Fred will join fellow author David Rapp and documentary filmmaker Aviva Kempner at East City Book Shop on Capitol Hill for an All-Star panel at 6:00 p.m. just before the Home Run Contest.

As we continue the July 4th travel season this week, I wanted to remind you of a note I sent on Friday highlighting the great work and important research of our friends at the MIT Concrete Sustainability Hub on Pavement-Vehicle Interactions – research that can lower fuel consumption and vehicle emissions. It is a perfect add-in to any stories you or your colleagues may be considering on the heavy travel week. While this will be the busiest July 4th travel week ever, much of the traffic is likely to be spread out with the heaviest day to launch being tomorrow afternoon.

There is a new letter today from CEI and several other groups opposing the Kigali amendment to the Montreal Protocol. The letter says the amendment would do "far more economic harm than environmental good," adding that the environmental benefits are minimal. But that is just not right. A recent economic analysis for the White House showed significant jobs gains, 13 Republican Senators (mostly conservatives) urged the President to submit it to the Senate, 34 HVACR Manufacturing CEOs urged support and 3 conservative taxpayers groups (ACCF, Americans for Tax Reform and FreedomWorks) suggested Trump support Kigali because of global competitiveness advantages. And all of this occurs after last week's lawsuit by 11 states against EPA over implementing over HFC reductions.

If you are following recent tweets and comments from President Donald Trump about OPEC oil market manipulation, SAFE President/CEO Robbie Diamond weighed in saying Trump is right to point to OPEC as manipulating the market, but urged him to also turn his sights to "**solutions that end oil dependence and the cartel that manipulates the market rather than having the U.S. come hat in hand to these foreign powers. Asking the cartel to increase output is like trying to put a Band-Aid on a broken system that shouldn't even exist in the first place.**"

Finally, the most grueling test of strength and endurance – *the Tour de France* – cycling's crown jewel, starts on Saturday. With one more *Tour* victory, Chris Froome can match the record of five shared by Jacques Anquetil, Eddy Merckx, Bernard Hinault and Miguel Indurain. The start of the 105th edition will be at *Noirmoutier-en-l'île*. The 2018 *Tour* route will include a total of 26 mountain climbs or hills, including 12 in the Alps, 4 in the Massif central and 10 in the Pyrenees. Ouch!!! Riders arrive in Paris on July 29th.

Enjoy the holiday week...Stacey and kids headed to *Imagine Dragons* tonight. I bet that's a fun show. Call with questions ...Best,

Frank Maisano
(202) 828-5864
c. (202) 997-5932

FRANKLY SPOKEN

"Kigali gets us everything we want and everything we've been advocating for for a long time—a unified, negotiated decision on phasedowns [of HFCs] instead of prohibitions. U.S. ratification of the global deal offers the greatest level of certainty for the market writ large. That process, rather than litigation, is where our industry will be focusing its efforts in the coming months.""

Caroline Davidson-Hood, general counsel for the Air-Conditioning, Heating, and Refrigeration Institute regarding the lawsuit filed by 11 states challenging implementation of EPA HFC reductions

"Because of the technological prowess of American manufacturers, U.S. businesses stand to gain from this deal – ratification will open new markets at a time when demand for refrigeration, heating, and air-condition equipment is projected to grow."

A letter from conservative tax group leaders of Americans for Tax Reform, FreedomWorks and the American Council for Capital Formation on moving the Kigali amendment forward in the Senate.

FUN OPINIONS

CEOs Say Kigali Essential for Global Competitiveness – ICYMI, following the letter from 13 Senators urging the White House to send them the Kigali amendment to the Montreal Protocol, 34 HVACR Industry CEOs wrote a letter to President Trump urging his support for Kigali. These are major manufacturers that include Honeywell, Lennox, Fujitsu, Johnson Controls, Rheem, Dow Chemical and many more. The CEOs, who speak for more than 589,000 Americans currently employed in the industries, urged the President to send the Kigali Amendment to the Senate to secure a position of strength for American companies in a highly competitive global market for next generation air conditioning, refrigeration, thermal insulation, aerosols, medical uses, fire suppression, semiconductors and other technologies that utilize fluorocarbons.

IN THE NEWS

AGs Suit Spurs New Twist in Kigali Discussion – CEI will release a letter today opposing the Kigali amendment to the Montreal Protocol but a legal challenge to EPA's current regulations on HFC reductions by 11 states. In its guidance, the EPA said revoking the rules would "dispel confusion and provide regulatory certainty" after a federal appellate court in July 2017 struck down large portions of the Obama-era regulation. NRDC filed a similar suit earlier this week. Another legal fight over the EPA guidance raises concerns about avenues for regulations to change, even as the industry continues to advocate for U.S. participation in a 2016 global deal to phase down HFCs called the Kigali Amendment to the Montreal Protocol.

Better Pavement Mean Better Fuel Econ, Less Emissions – As we begin the July 4th travel season, you or your colleagues should check out the important research by MIT's Concrete Sustainability Hub on Pavement-Vehicle Interactions – studies about how we can lower fuel consumption and vehicle emissions by taking a new approach to building and maintaining our roadways. It is a perfect add-in to any stories you or your colleagues may be considering on the heavy travel week this July 4th.

Wasted Energy in Travel – All vehicles, whether gasoline, diesel, or electric, use energy to move—but some of that energy is wasted. The quality of the roads we drive on every day impacts the amount of fuel we use, as well as the associated greenhouse gas emissions. On roads with poor surface conditions or inadequate structural properties (like many in our favorite District) vehicles consume additional fuel beyond what's needed to move. This wasted fuel is known as excess fuel consumption, and it has a significant impact on fuel economy and vehicle emissions.

Pavement Improvements Help Reduce Fuel Consumption – MIT's Concrete Sustainability Hub (CSHub) researchers study pavement-vehicle interaction (PVI) in an effort to understand and quantify the impacts of excess fuel consumption. MIT's research focuses on three key factors:

1. ROUGHNESS: whether the road is bumpy or smooth. Roughness, commonly seen and felt as the presence of cracks and potholes, has a significant impact on passenger vehicles.
2. TEXTURE: the abrasiveness of the road surface, which can be seen and heard when driving.
3. DEFLECTION: the bending of a pavement under the weight of a vehicle. Deflection is present from the initial construction, and depends on pavement design. Think of the difference between walking or riding on sand versus a paved surface.

Road Solutions Can Improve Fuel Efficiency, Reduce Emissions – CSHub studies suggest that excess fuel consumption can be significantly reduced by building stiffer roads and maintaining smoother pavements—benefiting states and municipalities alike through reductions in emissions and fuel costs to drivers. And it reduces road ware costs on vehicles and tires, while improving driving comfort. There are two case studies that quantify fuel waste on US roadways. The impacts of excess fuel consumption depend on a variety of factors, including location, traffic levels, pavement designs, and maintenance schedules. MIT has done case studies examining real roadway networks, including in California and Virginia:

- California: Using data collected by the California Department of Transportation (Caltrans) through the use of GPS and ground-penetrating radar, MIT conducted an analysis of the state's entire 50,000 lane-mile system and found excess fuel consumption of 1 billion gallons over a 5-year period. The collaboration showed that PVI, including roughness and deflection, accounts for 1 percent of overall fuel consumption on California highways.

- Virginia: A study of the Commonwealth's interstate highway system—some 5,000 lane miles in total—identified 1 million tons of CO2 associated with EFC emissions over a 7-year period. Researchers also determined that only 1.3 percent of the interstate network is responsible for 10 percent of its total greenhouse gas emissions, meaning rehabilitation of those few lane miles could result in significant environmental improvements.

Who Can Help – If you're looking for a resource to discuss the impact of pavement interaction on fuel economy and emissions, MIT's Jeremy Gregory (jgregory@mit.edu) is available to address the key issues, impacts and examples surrounding improved pavements and infrastructure … and how this affects American communities and drivers. MIT's Concrete Sustainability Hub [cshub.mit.edu] is pushing the frontier of academic research into building materials, with implications for policymakers, communities, the transportation industry, fleets and the millions of American drivers hitting the roads over July 4th and all summer. For more info, drop me a note, reach out to Jeremey or connect with MIT communications person Anne Wilson Yu. You can reach her at awwilson@mit.edu

ACCF: Proxy Advisory Have Minimal Oversight – The American Council for Capital Formation released a new report that says proxy advisory firms are operating with minimal oversight. The firms, which advise shareholders on how to assess and vote on company plans, are moving toward an increasingly activist stance on issues relating to the environment, as well as social and political issues. The report, titled "The Conflicted Role of Proxy Advisors," examines the impact such proxy firms have on major policies at most publicly traded companies. Our friend Dave Banks is leading an effort at ACCF on this issue.

ON THE SCHEDULE THIS WEEK

JULY 4th HOLIDAY

Stanford to Look at Behavior, Enviro Change – Stanford holds an event on Thursday evening featuring PhD Candidate Jen Wang, who will discuss an even more fundamental condition and challenge to positive environmental change – getting humans to change their behaviors. From the everyday choices we make to our combined organizational behaviors, human behavior is at the core of the environmental issues we care about.

Event to Honor Tesla Birthday – On Friday evening, the International Club of DC and the Embassy of Croatia host a dinner reception of Croatian culture, music, wine, and cuisine on the occasion of the 162nd anniversary of the birth of Croatian-born scientist Nikola Tesla. During the event, Tesla will have a Model S and Model X on display. Tesla product experts will be on hand to answer questions and show you how electric vehicles can fit seamlessly into your lifestyle. Test rides will be offered on a first come, first serve basis.

IN THE FUTURE

Clean Energy Forum on Schedule – The 2018 Congressional Clean Energy Expo and Policy Forum will be held tomorrow and brings together up to 45-55 businesses, trade associations, and government agencies to showcase renewable energy and energy efficiency technologies.

BPC Forum to Examine Oil, Gas Issues – On Thursday at 10:30 a.m., the Bipartisan Policy Center (BPC) convenes a panel of experts to examine the current state of the Environmental Social Governance (ESG) movement in the oil and gas sector and explore what's coming next. This movement continues to gain traction in a time when the regulatory agenda has changed significantly under the Trump Administration. ESG is particularly significant for the energy sector, specifically as shareholder resolutions surrounding climate change continue to take center stage in the media and in the boardroom.

Duke CEO, CARB Chair, Others Headline POLITICO Summit – POLITICO is hosting its second Pro Summit on July 17th at the Renaissance Hotel. The Pro Summit brings together Pro subscribers, expert reporters, key decision-makers, and others who are shaping the policy landscape for a full day of incisive conversations. Summit speakers include Rep. Joe Crowley, Duke CEO Lynn Good, FERC Chair Kevin McIntyre, Amy Myers Jaffe of the Council on Foreign Relations, Coal CEO Bob Murray, California Air Resources Board Chair Mary Nichols and many others. Duke Energy is the main event sponsor.

Grid Forum Set for Iowa – The TransGrid-X 2030 Symposium will be held on July 26th in Ames, Iowa. The event will showcase the long-awaited NREL Seam Study—a concept featuring bi-directional high-voltage transmission; 600 GW of wind, solar and gas-fired generation; and a trillion-dollar economic event, if fully built. Our friends Rob Gramlich and former FERC Chair Jim Hoecker will be among the speakers.

EPRI Hosts Electrification Conference – The Electric Power Research Institute (EPRI) hosts the inaugural Electrification 2018 International Conference and Exposition on August 20th to 23rd in Long Beach CA. Hosted by the and sponsored by more than 20 major utilities and organizations, this annual conference will bring together utility leaders, regulators, researchers, academia, vendors, economic development groups, and energy users from diverse manufacturing, transportation, industrial, and agriculture sectors around the globe. SoCo CEO Tom Fanning is among the many speakers.

FRANK MAISANO
Senior Principal
Ext. 5864
Policy Resolution Group

Message

From: Maisano, Frank [frank.maisano@bracewell.com]
Sent: 6/18/2018 7:16:05 PM
To: Maisano, Frank [frank.maisano@bracewell.com]
Subject: June 18 PRG Energy Update: Summer Solstice Energy

Friends,

The winner of the 2018 US Open for golf this year was Shinnecock Hills. Yes, Brooks Koepka took home the trophy for the second straight year – which is amazing and rare – but the course really was the overall winner, proving tougher than even many of the greatest players in the world could even imagine. This was exemplified by the controversy when Phil Mickelson struck his own still moving ball on the 13th green on Saturday. The crazy things a tough course does to these guys.

And talking about crazy. How about Argentina/Iceland playing to a 1-1 tie? And forget about natgas drilling or global warming, apparently, a World Cup victory over Germany can cause an earthquake in Mexico. Colombia/Japan kick off tomorrow's FIFA World Cup action as Group Play continues. See the full schedule here.

Trade talk is buzzing across town and it will likely get more heated this week when Commerce Secretary Wilbur Ross appears Wednesday before the Senate Finance Committee to discuss tariffs. On the international trade front things are staying very busy: new tariffs on China, the future of NAFTA in question, and the ongoing dispute over the steel and aluminum tariffs. Secretary Ross will have to be prepared to answer questions on all of these topics and more. Our team here has been in the trenches in this policy debates and has been watching all of these issues closely. If you want to get a perspective on the ongoing trade disputes and what they may mean for the manufacturing and energy sectors feel free to contact Paul Nathanson (paul.nathanson@bracewell.com, 202-828-1714) or Josh Zive (josh.zive@bracewell.com, 202-828-5838).

Meanwhile, Energy Secretary Rick Perry will deliver remarks Friday at the Commerce Department's SelectUSA 2018 Investment Summit, discussing energy investment and innovation technology.

Ahead of this week's meeting of members and nonmembers of the Organization of the Petroleum Exporting Countries, OPEC members are considering a compromise agreement to increase oil production by 300,000 - 600,000 barrels per day in the next few months, according to people briefed on the discussions. Action starts Wednesday and our friends from SAFE can give you the full brief if you call Bridget Bartol (bbartol@secureenergy.org).

In Congress, the House takes up a number of funding bills (including the Energy/Water funding legislation) on the House Floor. Expect amendments and votes on all sorts of topics. A House Energy panel meets Wednesday to explore the effects of the recent tax overhaul. On Thursday, the House Science Environment Subcommittee holds a hearing on state perspectives regulating background ozone. Then Friday, another House Energy panel gathers for a hearing on advanced biofuels.

Outside DC, CO2NNECT 2018 launches today in Jackson Hole today to look at progress on carbon capture and features remarks from Sen. EPW Chair John Barrasso, Democratic Gov. Steve Bullock of Montana and GOP Gov. Matthew Mead of Wyoming. And starting tomorrow Renewable Energy Finance Forum (REFF) NYC brings together the biggest investors and developers to drive investment in the renewable energy sector. Finally, on Thursday, our friend Matt Letourneau from the Chamber's Global Energy Institute (GEI) speaks to a group of utility communicators in Louisville, Kentucky at UCI's 2018 annual conference.

Speaking of the Chamber's GEI and Thursday, they will host a global energy security forum at 3:30 p.m. that will release the 2018 International Index of Energy Security Risk. GEI President and CEO Karen Harbert and White House Energy Advisor Wells Griffith will offer remarks, while GEI international expert Steve Eule hosts a panel that Includes Embassy Energy officials from Canada, Mexico and the UK.

Summer Solstice on Thursday... Longest daylight of the year and first official day of Summer!!! Call with questions...Best,

Frank Maisano
(202) 828-5864
c. (202) 997-5932

FRANKLY SPOKEN

"Self-driving technologies will have an enormously positive impact on our country, our economy, and our society. This is an opportunity too great to ignore and now is the time to prepare and implement policies that will unlock these myriad benefits and mitigate any negative impacts of this technological shift. There is a balance we must strike to realize the billions in economic savings from increased travel access and productivity, to reduced congestion and fewer accidents. The more we maximize the economic and productivity benefits while minimizing any potential impacts on job holders, the better off our country and workforce will be."

Robbie Diamond, President and CEO of SAFE on the release of its latest policy brief: America's Workforce and the Self-Driving Future: Realizing Productivity Gains and Spurring Economic Growth.

ON THE POD

Cap Crude: US Casts Big Shadow Over OPEC Meeting – As OPEC meets again in Vienna this week, the last US official to attend an OPEC meeting, Ken Hance tells Capitol Crude that the Trump administration should work closer with the producer group for price stability.

FUN OPINIONS

EIA: Adoption of AVs could increase U.S. transportation energy consumption – EIA release a great fact in its "Today in Energy series on autonomous vehicles. EIA says AVs are one of the main sources of uncertainty in the future of U.S. transportation energy consumption, as autonomous vehicle technology has the potential to change travel behavior, vehicle design, energy efficiency, and vehicle ownership. Analysis in EIA's *Annual Energy Outlook 2018* (AEO2018) shows that the widespread adoption of autonomous vehicles could increase overall light-duty vehicle travel and, depending on how those vehicles are powered, lead to slightly higher transportation energy consumption.
See graph and read more...

IN THE NEWS

ClearPath Continues Help for Heller – ClearPath Action Fund is planning to spend $500,000 to help re-elect Nevada Sen. Dean Heller. ClearPath Action Fund Founder Jay Faison said Heller has long been a leader among Republicans in expanding clean energy deployment and innovation. The Heller effort includes a new set of digital ads that recognize his clean energy leadership in Congress. "Senator Dean Heller has worked across the aisle in Washington, taking bipartisan action for clean energy technologies that create good jobs in Nevada," the 30-second ad states. That includes helping lead efforts to streamline clean energy project permitting on public lands and offer tax incentives for both clean energy production and storage. ClearPath will also run 15-second and 60-second ads showcasing Heller's record.

Simmons Named to Head DOE Renewable Office – President Trump intends to make Dan Simmons the permanent head of DOE's energy efficiency and renewable energy office, after more than a year as its top official. Simmons became EERE's principal deputy assistant secretary on May 1, 2017, after working on Trump's DOE transition and beachhead teams. Simmons has been well-received by both renewable advocates and Congress who have appreciated openness. Before joining the administration, Simmons was the vice president for policy at the libertarian-leaning Institute for Energy Research, which regularly attacked the Obama administration's renewable energy programs. He also directed the Natural Resources Task Force at the American Legislative Exchange Council.

Report Provides Comprehensive View on Cost, Benefits of Self-Driving Tech – Securing America's Future Energy (SAFE) today releases its latest policy brief: *America's Workforce and the Self-Driving Future: Realizing Productivity Gains and Spurring Economic Growth.* The study is an examination and in-depth economic analysis of the effects self-driving technologies could have on the American economy and its workforce. The report is based on research and individual reports led by three economists: former Bureau of Labor Statistics Commissioner Erica Groshen, former Senior Fellow at Resources for the Future W. David Montgomery and Compass Transportation CEO Richard Mudge. The report found that by 2050, AVs will add between $3 to $6 trillion in cumulative consumer and societal benefits to the U.S. economy. Annually, $800 billion in economic and societal benefits could be realized when AVs are fully deployed. Nearly every American will benefit from improved safety, enhanced access to transportation for senior citizens, people with disabilities and the disadvantaged, increased productivity, and the ability to gain productive time for work or errands.

Electrification Coalition Releases Inaugural Zero Emissions Vehicle (ZEV) Scorecard – The Electrification Coalition (EC) released the ZEV Scorecard, a ranking system and informational tool for policymakers, advocates, and the public to use as a guide to improve the effectiveness of state-level actions to increase adoption of plug-in electric vehicles (PEV). The ZEV states, which are already the country's leaders of supportive PEV policies and adoption, were analyzed and placed into three tiers with California, Maryland and Connecticut placing in the top tier. The ZEV Scorecard was developed by the EC to provide a single, comprehensive and data-driven ranking of the ZEV MOU states. By tracking policy changes over time it can help to determine effectiveness of certain strategies and can underscore the importance for states and other regulators to continue to create policies that support PEV adoption. States can analyze the steps taken to date in order to determine if they should implement or add to financial and non-financial incentives, develop EV infrastructure and, or create public awareness campaigns. The 2018 ZEV Scorecard Tiered Rankings include Tier 1: California, Maryland, Connecticut; Tier 2: Massachusetts, New York, New Jersey and Tier 3: Vermont, Rhode Island, Oregon, Maine. To determine the scorecard rankings, the EC used a weighted ranking system and appraised state-level policy actions for three categories: 1. State-provided incentives to consumers; 2. Availability and support of public refueling infrastructure; 3. Outreach campaigns to educate the public. The EC plans to update its analysis and the rankings of the participating ZEV states annually. The full report can be found here.

DOE Announces Prize Competition Winners to Bolster Onshore Manufacturing – The Department of Energy announced the winners of the American Inventions Made Onshore (AIM Onshore) Prize Competition at the 2018 MForesight National Summit in Washington, D.C. AIM Onshore is part of a DOE initiative to close the gap between American innovators who develop new energy technologies and domestic manufacturers who produce them. The four winning organizations listed below will receive $150,000 to deliver DOE's Build4Scale training to energy hardware innovators and help them forge partnerships with domestic manufacturers. DOE's Build4Scale training, released earlier this year, equips American scientists and engineers with knowledge of basic manufacturing processes, an understanding of product design for manufacturing, and the know-how to make and evaluate manufacturing-related decisions. By requiring winners to demonstrate a sustainable revenue stream to continue providing the training, DOE is leveraging a small initial federal investment in an initiative that will ultimately be sustained by the private sector. Winners include **Innovation Works – Pittsburgh, Pennsylvania;**
mHUB – Chicago, Illinois; FuzeHub – Albany, New York and **ADL Ventures – San Francisco, California**
DOE's Build4Scale training - developed by Lawrence Livermore National Laboratory in collaboration with industry, academia, and government and other resources - is available to the public for use and dissemination at Build4Scale.org.

Report Says Clean Energy Moon Shot Needed – The University of Virginia Darden School of Business' Batten Institute for Entrepreneurship and Innovation released a new policy playbook last week saying a national moonshot goal should be launched to spur more public and private investments in clean energy technologies. The playbook lists five other actions that should be taken, including national clean-tech bank and lending models and a "New Deal" strategy for helping communities bring in clean tech industries and jobs. The purpose of the playbook is to present new and innovative ideas for more rapidly moving the needle on addressing climate change. The policy actions presented here are motivated by a need to catalyze clean technology innovation. Recognizing that leadership by the federal government is unlikely in the current politicized environment, the playbook suggests a bottom-up approach to influencing change. Innovating for climate change will require solutions that address both mitigation and adaptation. See the recommendations here.

ON THE SCHEDULE THIS WEEK

Carbon Capture forum Features Barrasso, Govs – The Great Plains Institute holds CO2NNECT 2018 today in Jackson Hole today to look at progress on carbon capture. event includes lawmakers such as Wyoming GOP Sen. John Barrasso, who heads the Senate environment committee; state leaders such as Democratic Gov. Steve Bullock of Montana and GOP Gov. Matthew Mead of Wyoming; and executives from companies such as NRG Energy Inc., NET Power LLC, Occidental Petroleum Corp., and Peabody Energy Corp. The event is designed to increase understanding and harness leadership support for carbon capture among governors; members of Congress; industry executives; labor, philanthropic and NGO leaders; and journalists and media influencers.

DOE, NEI, Westinghouse Address Nuclear Meeting – The American Nuclear Society's annual meeting is today through Thursday in Philadelphia at the Marriott. The event will feature business and government leaders delving into the global expansion of nuclear energy and revitalizing the struggling industry. Speakers include Westinghouse President and CEO Jose Gutierrez; Ed McGinnis of the Energy Department's nuclear energy office; and Nuclear Energy Institute President and CEO Maria Korsnick.

University Coalition Heads to CSIS – Today at 2:30 p.m., the CSIS Energy & National Security Program will host Janet Napolitano (President, University of California), Kristina M. Johnson (Chancellor, The State University of New York) and Timothy Carter (President, Second Nature) for a discussion on the recent launch of the University Climate Change Coalition (UC3), the role of research universities in the development of climate action plans, and their own imperatives for a more sustainable energy system. This spring, UC3 was launched by 13 research university systems in the United States, Canada, and Mexico to mobilize their resources and expertise to inform and facilitate climate solutions in partnership with businesses, local communities, cities, and states. The coalition will utilize its research base and multidisciplinary approaches to craft innovative climate action plans, develop new energy technologies, and advance climate science. UC3 will work in partnership with Second Nature's Climate Leadership Network, a group of hundreds of colleges and universities that have committed to take action on climate change and sustainability actions. Climate Change and the National and Corporate Interest is a high-level speaker series showcasing a variety of country and corporate perspectives on plausible pathways for pursuing a climate change strategy and why those actions are in their national or commercial interest.

RFF Webinar Set to Discuss Electricity Resilience – Resources for the Future (RFF) hold a webinar today at 3:00 p.m. focused on the economics of electricity system resilience. Researchers at Resources for the Future have published previously on decisionmaking on this topic, and on May 30, they co-hosted a workshop with the R Street Institute on economic approaches to identifying and addressing resilience in the bulk power system. This webinar will highlight the timely lessons from that workshop, including definitions of resilience and how it relates to reliability, what's wrong and what's right about existing markets and institutions, the role of consumers, and how to decide what to do next.
A careful analysis suggests that current institutions to support system reliability go a long way toward supporting system resilience—and that real threats to reliable electricity supply and quick recovery from outages may lie in other parts of the system, and therefore call for differently targeted measures.
Register to attend the webinar. Speakers include former AWEA policy chief Robert Gramlich, R Street's Devin Hartman, RFF's Karen Palmer and former DOE official Susan Tierney.

Forum to Look at Ukraine Energy – The Commission on Security and Cooperation in Europe hold a briefing today at 3:30 p.m. in Dirksen G-11 on curbing corruption in Ukraine's energy sector. This briefing will review the challenges facing Ukraine's energy sector with a focus on corruption's role in preventing necessary reforms. Speakers will provide expertise and insight as to how Ukraine's energy sector fits into the larger picture of Ukraine's fight against corruption. They will also examine Russia's malign influence in the country. Finally, the briefing will offer policy responses to these issues. Former Ambassador Bill Courtney and CSIS expert Ed Chow will speak.

REFF Wall Street Forum Set – The Renewable Energy Finance Forum (REFF) New York City will be held tomorrow and Wednesday in NYC. For 15 years, REFF-Wall Street has brought together the biggest investors and developers to drive investment in the renewable energy sector. This year features a special line-up of dynamic speakers, high-level

networking opportunities, and the most active players in the renewable energy industry. FERC Commissioner Neil Chatterjee and ACORE's Greg Wetstone are among the speakers.

FERC Chair to Address NatGas Roundtable – The Natural Gas Roundtable will host its monthly meeting at the University Club tomorrow at Noon. FERC Chairman Kevin J. McIntyre, will be the guest speaker.

Stimson Center to Discuss China, Arctic – The Stimson Center's East Asia Program discussion tomorrow at 12:30 p.m. on regional perspectives of Chinese activities in the Arctic.

Landscape Architects Discuss Climate – The American Society of Landscape Architects holds a discussion tomorrow at 6:30 p.m. on smart policies for a changing climate. The event is a candid discussion with ASLA CEO Nancy Somerville and Diane Jones Allen of the College of Architecture Planning and Public Affairs at the University of Texas at Arlington. They will discuss a recent Blue Ribbon panel's findings and ASLA's ambitious efforts to align landscape design approaches through the adoption of effective public policies.

Senate Finance Talks Trade with Ross – Commerce Secretary Wilbur Ross will appear Wednesday at 9:00 a.m. before the Senate Finance Committee to discuss tariffs.

House Energy Panel to Look at Energy Tax Issues – The House Energy and Commerce Committee hold a hearing on Wednesday at 10:00 a.m. on the benefits of tax reform on the energy sector and consumers.

Senate to Host EPA Nominees – The Senate Environment Committee holds a hearing on the nominations of William McIntosh and Peter Wright to be assistant administrators of EPA on Wednesday at 10:00 a.m.

CSIS to Host BNEF Energy Outlook – The CSIS Energy & National Security Program is hosting the launch of Bloomberg New Energy Finance's (BNEF) New Energy Outlook 2018 on Wednesday at 10:00 a.m. NEO 2018 is BNEF's annual economic forecast for the world's power sector. Built over nine months, it is the result of international collaboration between 65 market and technical experts from BNEF's 11 offices. For the first time, NEO projects out to 2050, offering 10 more years of data and new insights about the energy transition in the long-term. Seb Henbest (NEO Lead Author and Head of Europe, Middle East & Africa; BNEF) will present the findings of the NEO 2018, followed by Q&A and discussion led by MIT's Francis O'Sullivan.

Book Event Looks at Chernobyl – The Woodrow Wilson Center Kennan Institute for Advanced Russian Studies holds a book discussion on Wednesday at 11:00 a.m. looking at a new book on Chernobyl and the history of the nuclear catastrophe. In his new book, *Chernobyl: The History of a Nuclear Catastrophe*, Serhii Plokhii draws on new sources to lay bare the flaws of the Soviet nuclear industry, tracing the disaster to the authoritarian character of Communist party rule, the regime's control of scientific information, and its emphasis on economic development over all else. Today, the risk of another Chernobyl, claims Plokhii, looms in the mismanagement of nuclear power in the developing world.

Atlantic Council Hosts BP Stat Review – On Wednesday at 12:30 p.m., Atlantic Council is hosting the US launch of the 2018 BP Statistical Review of Energy with BP Group Chief Economist Spencer Dale. As the energy landscape continues to undergo profound change, it is more important now than ever to understand the trends and developments driving this change. The 2018 BP Statistical Review of World Energy examines issues like who is winning the tug-of-war between OPEC oil and tight oil, why natural gas grew so fast in 2017, and if there is enough cobalt and lithium to fuel battery demand going forward. BP's Statistical Review provides an objective overview of what happened to energy markets in 2017 and a guide to future trends. Perhaps more importantly, it helps us better understand the complex world in which we operate. Dale will present the findings of BP's 2018 report, one of the most widely respected and highly anticipated global energy publications, followed by a moderated discussion.

GTM to Host Grid Forum – Greentech Media host Grid Edge Innovation Summit on Wednesday and Thursday in San Francisco. The event is an energy conference that will examine the energy customer of tomorrow and how new innovative business models are quickly emerging. GTM brings together forward thinking and prominent members of the

energy ecosystem and as our research team explores the future of the market. Former FERC Chair Jon Wellinghoff will speak along with many others, including our friends Shayle Kann, Julia Pyper and Stephen Lacey.

Forum to Discuss Roof Top Solar – Bernstein Management Corporation, Carr Properties, WC Smith, New Partners Community Solar and Sol Systems host a forum on Thursday at 8:00 a.m. at the Greater Washington Board of Trade to discuss different ways each took advantage of available incentives and successfully "went solar" in DC. Each will share the benefits, the challenges, and the lessons learned.

AAAS Hold Science/Tech Forum – The American Association for the Advancement of Science holds the 2018 Science and Technology Policy Forum. Former Rep. Rush Holt and other will speak on the agenda.

OPEC Meeting Set for Vienna – OPEC hosts its 7th International Seminar in Vienna with the theme Petroleum—cooperation for a sustainable future. Our friends at SAFE can discuss. Lots of big names speaking that you can see here.

S&P Hosts Transmission Forum – S&P Global Platts holds 2018 Transmission Planning and Development Conference on Thursday at the Hilton in Arlington, Va. The event will address key growth drivers impacting the US electric transmission grid. FERC Commissioner Neil Chatterjee, analyst Christi Tezak, hydro expert Jeff Leahy, ITC's Nina Plaushin and many more.

Forum to Look at Water Infrastructure – On Thursday at 9:00 a.m., the Brookings Metropolitan Policy Program will host utility, workforce, and community leaders to discuss the economic and infrastructure opportunity offered in the water sector. The event follows the release of a new report, Renewing the water workforce: Improving water infrastructure and creating a pipeline to opportunity, which provides clearer metrics and actionable strategies on this front. Louisiana Rep. Garrett Graves will keynote followed by a panel.

House Science Tackles Ozone Science – The House Science Environment Subcommittee holds a hearing on Thursday at 10:00 a.m. looking at state perspectives on regulating background ozone. Witnesses include Diana Rath of Alamo Area Council of Governments, AZ DEQ air quality official Tim Franquist, EDF's Elena Craft and scientist Gregory Stella of Alpine Geophysics.

House Transpo Looks at Pipeline Legislation – The House Transportation and Infrastructure Subcommittee on Railroads, Pipelines and Hazardous Materials will host an oversight hearing Thursday at 10:00 a.m. to examine the *Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act*, enacted in June 2016 in the wake of a 100,000-metric-ton gas leak from the Aliso Canyon underground storage facility managed by Southern California Gas Co. directed the nation's top pipeline regulator, the Pipeline and Hazardous Materials Safety Administration, to set baseline safety standards for underground gas storage facilities, prioritize work on unfinished congressional mandates and study the potential for a centralized pipeline incident database, among other steps.

House Small Biz Committee Looks at Ag Regs – The House Small Business agriculture and energy subcommittee looks at how federal regulations affect small farmers. Witnesses include Craig Martins on behalf of the National Council of Farmer Cooperatives and GROWMARK, John Weber of the National Pork Producers Council and Glenn Brunkow on behalf of the American Farm Bureau.

Wilson Forum Looks at Arctic Communities, Energy – The Woodrow Wilson Center's Canada Institute and Polar Initiative hold a conference call briefing on Thursday at 11:00 to discuss energy innovation in remote Arctic communities. The webinar features a spotlight on the energy approaches of these remote Arctic communities and how innovations are contributing to economic development and community resilience.

Forum to Look at Air Quality Issues –The World Resources Institute holds forum on Thursday at Noon looking at open air quality data to fight unequal access to breathable clean air. This presentation shares stories of communities from Delhi to Ulaanbaatar to Sarajevo and from scientists to journalists, using open air quality data from the platform to

advance their fight against air inequality. The subsequent open-source tools, the OpenAQ community has developed and the entire data-sharing platform may be of interest to other open data communities.

Chamber to Release Security Index – The U.S. Chamber of Commerce's Global Energy Institute (GEI) hold a forum to release its 2018 International Index of Energy Security Risk on Thursday at 3:30 p.m. GEI President and CEO Karen Harbert will offer remarks followed by a presentation and panel discussion on international energy security challenges moderated by GEI Vice President Steve Eule. The *Index of U.S. Energy Security Risk: Assessing America's Vulnerabilities in a Global Energy Market* is an annual energy risk indicator, which uses quantifiable data, historical trend information, and government projections to identify the policies and other factors that contribute positively or negatively to U.S. energy security. The Index provides a look at energy security retrospectively from 1970 to 2013 and prospectively from 2014-2040. From this data, policymakers and energy professionals can use the Index to track shifts in U.S. energy security over time and assess potential impacts of new policies.

Duke's Good to Speak at Women Conference – The Center for Strategic and International Studies is hosting a Smart Women, Smart Power conversation with Duke Energy CEO Lynn Good on Thursday at 6:00 p.m. She will discuss trends impacting the energy industry, the challenges it faces, and the efforts being made to create a cleaner, smarter energy future. The conversation will be moderated by Fortune's Nina Easton.

NERO to Honor Scalise, Heitkamp – The National Energy Resources Organization will hold its 2018 Awards dinner on Thursday at the Capitol Hill Hyatt. Awardees will be Majority Whip Steve Scalise and Sen. Heidi Heitkamp. NERO is a non-partisan organization whose mission is to engage in dialogue on energy issues, recognize outstanding achievements, and promote public awareness.

House Energy Loos at Advanced Biofuels in RFS – The House Energy and Commerce hearing on Friday at 9:15 a.m. in 2322 Rayburn on advanced biofuels Under the RFS. The hearing will look at current status and future prospects.

Forum to Look at Climate Finance – On Friday at 10:00 a.m., Brookings hosts a panel of experts will provide an update on innovations in multilateral climate finance. John Roome, senior director for climate change at the World Bank, will discuss innovative approaches for supporting clean infrastructure in developing countries, since too often climate effects hit poor people the hardest. Kruskaia Sierra-Escalante, manager of the International Finance Corporation (IFC)'s Blended Finance Unit, will discuss blended concessional finance for the private sector. Brookings Senior Fellow Joshua Meltzer will discuss his latest research on the topic.

IN THE FUTURE

World Gas Conference Features Perry, Industry Leaders – The International Gas Union (IGU) hosts the 27th World Gas Conference (WGC 2018) in Washington DC from June 25-29. The triennial event aims to raise the voice of natural gas while offering timely updates on strategic, commercial and technical issues facing the entire gas value chain and offers the most comprehensive and diverse program to date for the natural gas industry. For the first time ever this includes topics for professionals working in sectors including finance, trading, law, sustainability/renewables, policy/government. Energy Secretary Rick Perry headlines.

Young Professional Program for World Gas Forum Set – The Young Professionals Program (YPP) will hold a special forum during the World Gas Conference June 25-29 in Washington, DC. YPP will provide a great opportunity for promising young professionals in the energy sector to learn from top leaders in the natural gas industry and network with their peers throughout the world. More on this as we get closer.

Forum to Talk Eastern Europe Energy – The Atlantic Council Global Energy Center and the Hungarian Presidency of the Visegrád Group holds its "Towards 21st Century Energy Systems in Central & Eastern Europe" conference next Monday. The event will feature discussion and debate on the strategic and policy implications of the Trump Administration's energy agenda and its impact on the transatlantic relationship, with special attention paid to the Central and Eastern European region. The expert panels will discuss the impact of the US' energy agenda on Central and Eastern Europe and innovation in Central and Eastern European energy systems.

Brookings Talking Global Markets With Experts – The Cross-Brookings Initiative on Energy & Climate will host Fatih Birol in a discussion facilitated by Initiative Co-Chair David G. Victor. Both renowned energy experts, they will discuss the latest updates in global energy, including recent evolutions in global markets and prices, and the intersections of climate change and energy policy. Fatih Birol is executive director of the International Energy Agency (IEA), and has been named by Forbes Magazine as one of the most influential people in world energy, and "Energy personality of the year" in 2017 by the Financial Times. He is also chair of the World Economic Forum's (Davos) Energy Advisory Board and serves on the U.N. Secretary-General's Advisory Board on Sustainable Energy for All. After the session, panelists will take audience questions.

ACEEE Forum Set – On Tuesday at the National Press Club, the American Council for and Energy Efficient Economy (ACEEE) will convene a one-day symposium to highlight international energy efficiency best practices, with a particular focus on opportunities for improvement in the United States. Our research has shown that energy efficiency can be a low-cost, powerful tool for countries to meet their energy and environmental goals and to sustainably increase shared prosperity. At this event, ACEEE will release its biennial International Scorecard, which examines the energy efficiency policies and performance of the world's 25 largest energy-consuming countries. The scorecard evaluates countries based on 35 metrics and shows how all can substantially improve their energy efficiency. The symposium will feature four panels that will explore: (1) scorecard findings, (2) lessons learned from high-performing countries, (3) opportunities for the United States, and (4) notable efforts and opportunities for global companies.

CSIS Hosts Climate Investments Head – On Tuesday June 26th at 9:00 a.m., the CSIS Energy & National Security Program will host Pratima Rangarajan, CEO of Oil and Gas Climate Initiative (OGCI) Climate Investments, for a conversation on OGCI Climate Investments within the context of the OGCI, why the fund was founded last year, and how and why Climate Investments differentiates itself from other funds. OGCI Climate Investments intends to invest $1 billion over the next ten years to develop and demonstrate innovative technologies which could significantly curb global greenhouse gas emissions.

Hydro Conference Set – HydroVision International will be held in Charlotte, NC on June 26-28th at the Charlotte Convention Center. HydroVision is the largest gathering of hydro professionals worldwide. The event highlights perspectives on the role of hydropower, explores issues affecting hydro resources, and helps participants develop a vision to meet challenges and ensure the future sustainability of hydro.

Forum to Look at National Lab Ideas – The Information Technology and Innovation Foundation holds a forum on Wednesday, June 27th at noon in 2325 Rayburn to look at new ideas for strengthening partnerships at DOE's National Labs. Two promising ideas for providing such connections are the proposed Impact for Energy Foundation and the pilot small business voucher program. The former would make it easier for companies and philanthropists to work collaboratively with intramural teams at DOE labs. The latter provides small businesses that need sophisticated insights with no-cost access to lab experts who can accelerate their innovations. Speakers will include Reps. Randy Hultgren Ben Ray Luján, as well as Rita Baranwal, Director of (GAIN) Gateway for Accelerated Innovation in Nuclear at the Idaho National Laboratory.

Forum to Look at Energy Policy In Brazil – On Thursday, June 28th at 9:00 a.m., the Inter-American Dialogue will hold a forum to look at energy policy in Brazil. The event features a panel discussion on the recent oil licensing rounds, opportunities for private investment in the oil, gas and power sectors, and the outlook for energy policy next year.

Forum to Look at Fossil Fuels in Sustain Energy Future – The U.S. Energy Association holds a forum on Thursday, June 28th at 10:00 a.m. to look access to affordable, reliable, sustainable, and modern energy services while reducing greenhouse gas emissions and the carbon footprint of the energy sector. This briefing seeks to discuss the following within the context of the 2030 Agenda including recommendations on Carbon Capture Use and Storage; financing investment in fossil energy; transformation of the Energy System, among other things. The speaker will be Scott Foster, the Director of the Sustainable Energy Division with the United Nations Economic Commission for Europe.

Chatterjee Headlines Grid Forum – Icons of Infrastructure hold a forum at the National Press Club on Thursday, June 28th afternoon looking at the transformation of the energy grid. The forum will look at how needed research and development efforts gets funded and what are the stakes for consumers, the energy sector and policymakers. In one packed day of headline speakers, panel debates, creative networking opportunities, open discussions, and an in-depth analysis, you'll learn about exciting developments in domestic energy markets, and hear insider perspective on the challenges we face. Speakers include FERC Commissioner Neil Chatterjee, NREL's Peter Green, DOE's Eric Lightner and many more.

Forum to Look at Climate Risk – At the June Adaptation Community Meeting, the US Agency for International Development (USAID), the World Bank, the International Finance Corporation, and the Inter-American Development Bank will come together on Thursday June 28th at 4:00 p.m. At the World Bank to discuss each organization's current and emerging approaches to climate risk management. The discussion will highlight each organization's approach, initiatives to track and assess the effectiveness of climate risk management, lessons learned, and ideas for the future.

Mulvaney Headlines Annual CEI Dinner – On Thursday June 28th, the Competitive Enterprise Institute holds its annual dinner and reception at the Marriott Marquis. National Review's Jonah Goldberg will be master of ceremonies and keynoter is OMB chief Mick Mulvaney.

JULY 4th HOLIDAY

Clean Energy Forum on Schedule – The 2018 Congressional Clean Energy Expo and Policy Forum will be held on July 10th and brings together up to 45-55 businesses, trade associations, and government agencies to showcase renewable energy and energy efficiency technologies.

BPC Forum to Examine Oil, Gas Issues – On Thursday July 12th at 10:30 a.m., the Bipartisan Policy Center (BPC) convenes a panel of experts to examine the current state of the Environmental Social Governance (ESG) movement in the oil and gas sector and explore what's coming next. This movement continues to gain traction in a time when the regulatory agenda has changed significantly under the Trump Administration. ESG is particularly significant for the energy sector, specifically as shareholder resolutions surrounding climate change continue to take center stage in the media and in the boardroom.

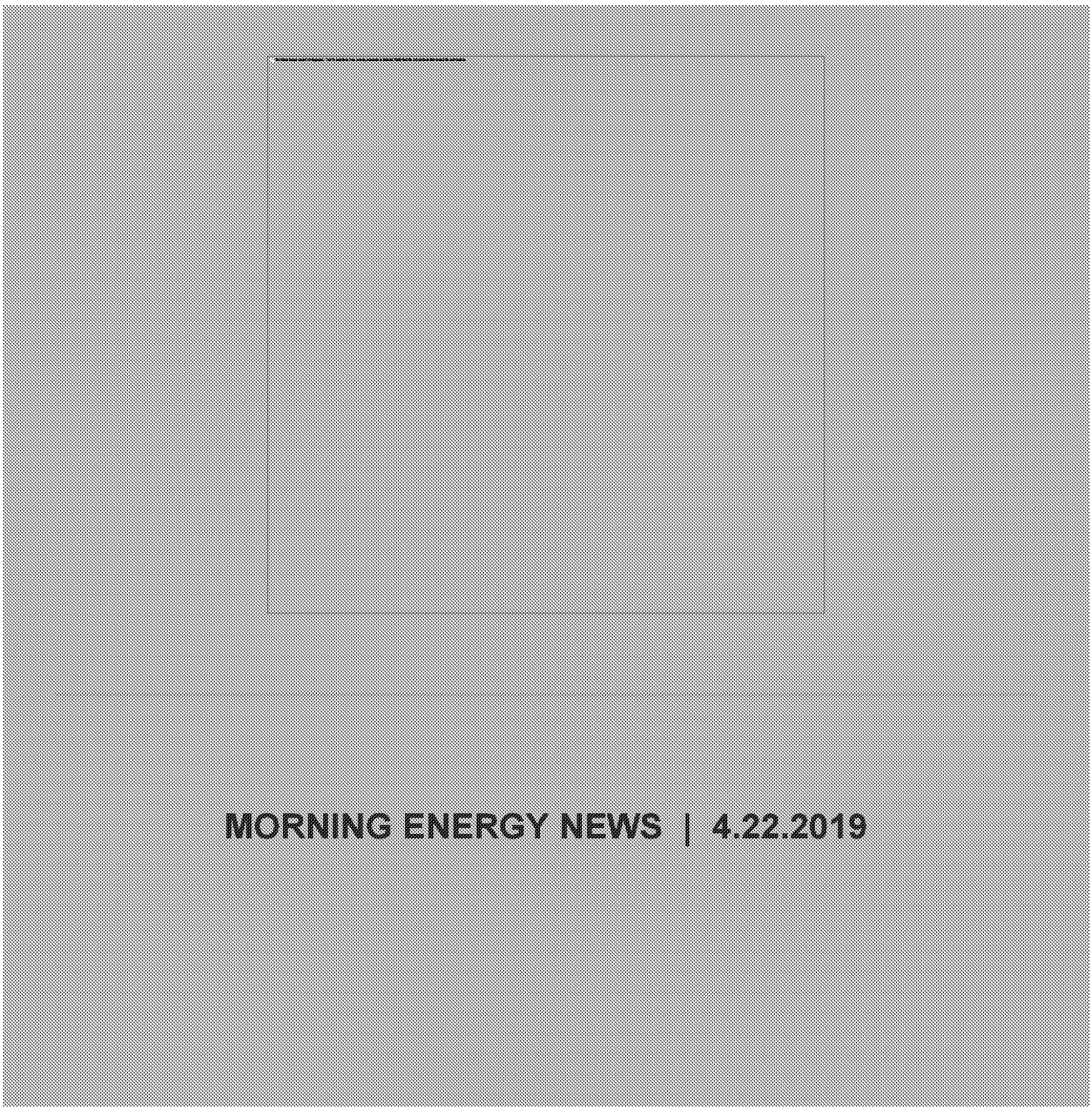
Duke CEO, CARB Chair, Others Headline POLITICO Summit – POLITICO is hosting its second Pro Summit on July 17th at the Renaissance Hotel. The Pro Summit brings together Pro subscribers, expert reporters, key decision-makers, and others who are shaping the policy landscape for a full day of incisive conversations. Summit speakers include Rep. Joe Crowley, Duke CEO Lynn Good, FERC Chair Kevin McIntyre, Amy Myers Jaffe of the Council on Foreign Relations, Coal CEO Bob Murray, California Air Resources Board Chair Mary Nichols and many others. Duke Energy is the main event sponsor.

FRANK MAISANO
Senior Principal
Ext. 5864
Policy Resolution Group

Message

From: American Energy Alliance [info@americanenergyalliance.org]
Sent: 4/22/2019 1:12:49 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: How do we honor the Malthusian holiday that happens to fall on the birthday of Vladimir Ilyich Ulyanov?

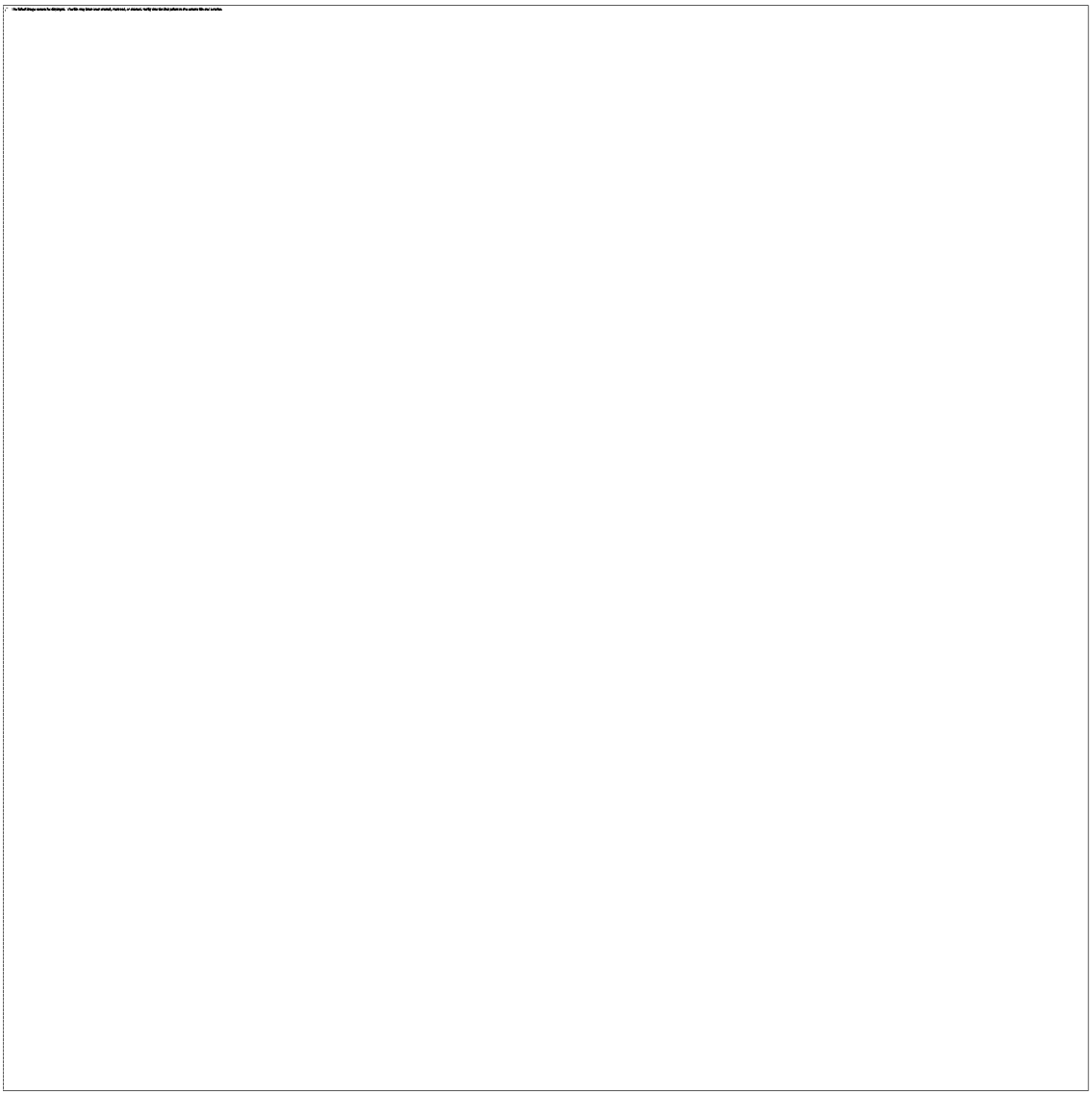
View this email in your browser

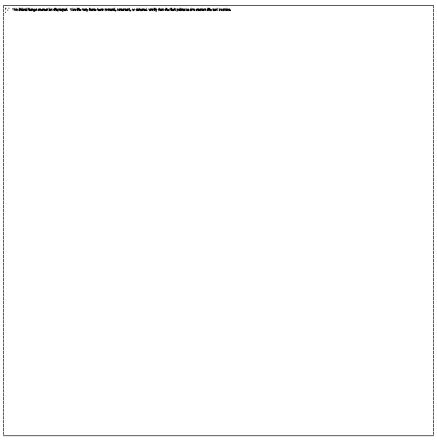


Subscribe Now

We go about your daily lives and be thankful.

Heritage Foundation (4/19/19) commentary: "This Earth Day, it almost feels like we should be carving some turkey. Why? Because we have a lot to be thankful for since the first Earth Day event occurred 49 years ago... In the United States, the common perception is that the country's environmental state is deteriorating. On the contrary, through investment in new technologies, and through legislation, environmental trends have improved significantly in the United States. Pollutants known to cause harm to public health and the environment are declining. According to the Environmental Protection Agency's latest air quality trends report, the combined emissions of the six common air pollutants have decreased 73 percent between 1970-2017....As a country grows economically, it increases the financial ability of its citizens and businesses to care for the environment and reduce pollutants emitted from industrial growth."


The fillable image exceeds the dimensions of one page. Use the image extract tool to extract fillable areas, or contact your administrator to obtain a version with smaller dimensions.



"if you haven't yet made [Earth Day] plans and wish to take a stand, there is one activity that you can do alone at home that will help you and the planet...Don't drive or fly. Don't buy anything. Do no laundry. Turn off the lights. Avoid going online. Depending on where on Earth you are, shut down the air-conditioning or heaters (unless you've got solar panels!). Breathe deep and take a seat. Doing nothing is also a way to do something."

– Ephrat Livni, *Quartz*

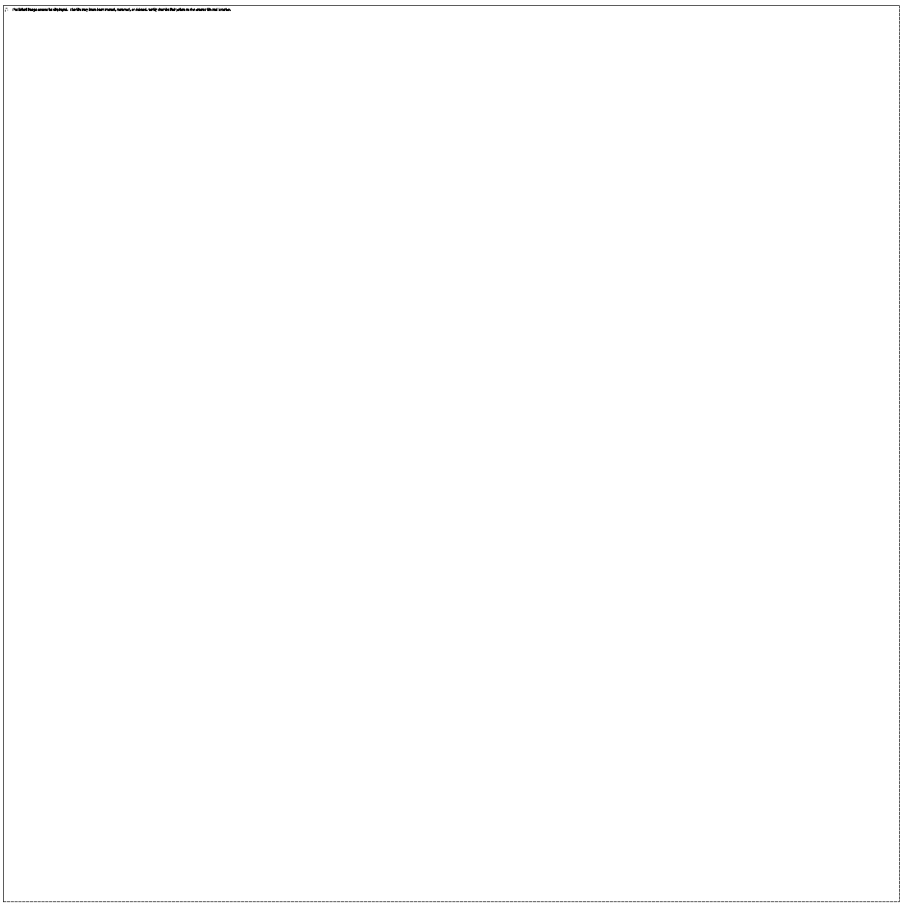
State renewable mandates: expensive and ineffective.

Axios (4/22/19) reports: "One of the most popular climate-change policies in America — renewable energy mandates — is also expensive, a new study says. Standards in roughly 30 states that require a portion of electricity to come from renewable sources, mostly wind and solar, are driving up power prices and imposing a high cost to reduce carbon dioxide emissions, according to a new report out today by the University of Chicago… This report, one of the most comprehensive analyses of its kind, questions the conventional wisdom that says these policies are effectively addressing climate change. 'The headline result here and the most important result in the whole exercise: signing up for these policies increases electricity prices, full stop. Second point: what do you get in exchange for that?' [said Michael Greenstone, lead author & director of the university's Energy Policy Institute]."

EV lobbyists aren't going to like this.

Brussels Times (4/17/19) reports: "Electric vehicles in Germany account for more CO2 emissions than diesel ones, according to a study by German scientists. When CO2 emissions linked to the production of batteries and the German energy mix - in which coal still plays an important role - are taken into consideration, electric vehicles emit 11% to 28% more than their diesel

counterparts, according to the study, presented on Wednesday at the Ifo Institute in Munich. Mining and processing the lithium, cobalt and manganese used for batteries consume a great deal of energy. A Tesla Model 3 battery, for example, represents between 11 and 15 tonnes of CO2. Given a lifetime of 10 years and an annual travel distance of 15,000 kilometres, this translates into 73 to 98 grams of CO2 per kilometre, scientists Christoph Buchal, Hans-Dieter Karl and Hans-Werner Sinn noted in their study. The CO2 given off to produce the electricity that powers such vehicles also needs to be factored in, they say."



Hollywood liberals, always going the extra mile.

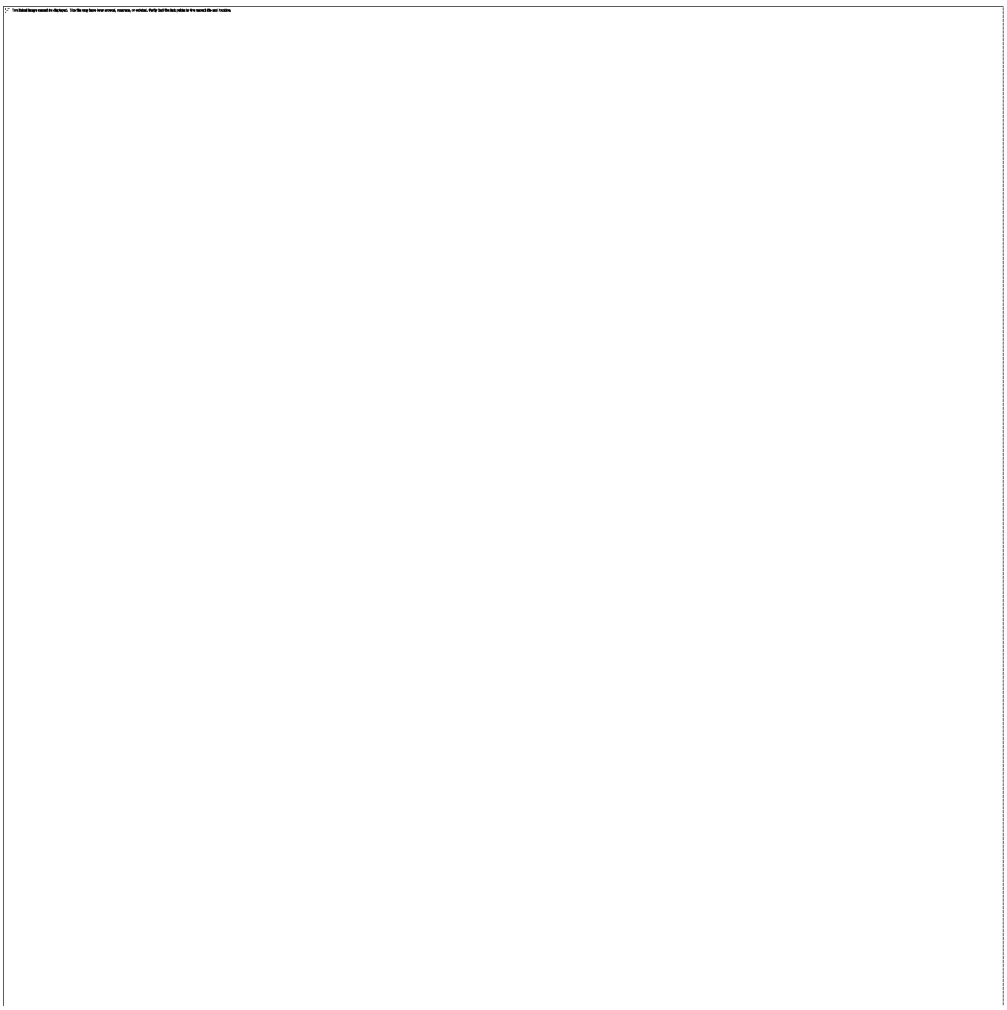
Mirror Online (4/19/19) reports: "Dame Emma Thompson arrived in London to

join the Extinction Rebellion protests, even though she had to 5,400-mile flight to be there. The 60-year-old Hollywood star flew in from Los Angeles and has stated she is willing to be arrested as part of the protest in central London. Her first action was to urge others to "come and join" the demonstrations, in a video shared by the campaign group, despite running up a three-tonne carbon footprint to be in the thick of the protest. Dame Emma admitted that she 'wanted to be arrested' as part of her 60th birthday celebrations, which coincided with the first day of protests, but was 'away with her husband' at the time. Speaking about joining the protest, Dame Emma said: 'I absolutely wanted to be arrested on my 60th birthday but I didn't quite manage that."'

LNG exports: To infinity and beyond.

Houston Chronicle (4/18/19) reports: "The Federal Energy Regulatory Commission approved the construction Thursday of two liquefied natural gas export terminals in Texas and Louisiana, adding to the momentum of an expected yearslong expansion of the burgeoning U.S. LNG industry. The commission, in a 3-1 vote, approved Driftwood LNG in Calcasieu Parish, La., and the Port Arthur LNG in Southeast Texas. The developers of the projects, Tellurian of Houston and Sempra Energy of San Diego, respectively, plan to make final investment decisions this year. 'We are one step closer to reaching

a final investment decision and delivering low-cost, reliable and clean U.S. natural gas to world markets,' said Carlos Ruiz Sacristán, CEO of Sempra North American Infrastructure"



Energy Markets

WTI Crude Oil: ↑ $65.55
Natural Gas: ↑ $2.53
Gasoline: ↑ $2.84
Diesel: ↓ $3.07
Heating Oil: ↑ $209.94
Brent Crude Oil: ↑ $73.77
US Rig Count: ↓ 1036

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Message

From: Dolley Madison [fedsoc@fed-soc.ccsend.com]
on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 5/23/2018 3:50:36 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Starting Now: Supreme Court Preview: Frank v. Gaos

The Federalist Society

May 23, 2018

Our Call is Beginning NOW

Dial 888-752-3232 to Participate

Supreme Court Preview: *Frank v. Gaos*

Litigation Practice Group Teleforum

Wednesday, May 23, 2018

|

12:00 PM ET

Theodore H. Frank
Director of Litigation
Competitive Enterprise Institute

On April 30, the Supreme Court granted cert in *Frank v. Gaos*, an appeal of a Ninth Circuit decision affirming a District Court cy pres class action settlement. The petitioner claims that because the class action members received no direct relief, the award does not support class certification and violates Rule 23 of the Federal Rules of Civil Procedure requiring a settlement binding class members to be "fair, reasonable, and adequate." Theodore Frank, petitioner in the case and member of the Federalist Society Litigation Practice Group, will join us to discuss this important case.

Dial 888-752-3232 to Participate

Speaker Biographies

Theodore H. Frank

Theodore H. Frank is a senior attorney and the director of CEI's Center for Class Action Fairness (CCAF). Before it merged with CEI in October 2015, he founded and ran CCAF as a non-profit, public interest law firm in 2009.

Mr. Frank has won several landmark appeals and tens of millions of dollars for consumers and other plaintiffs through his class action work. Adam Liptak of *The New York Times* calls Mr. Frank "the leading critic of abusive class action

settlements" and the *American Lawyer Litigation Daily* referred to him as "the indefatigable scourge of underwhelming class action settlements."

In 2008, Mr. Frank was elected to membership in the American Law Institute. He also serves on the Executive Committee of the Federalist Society Litigation Practice Group. Mr. Frank graduated from The University of Chicago Law School in 1994 with high honors and as a member of the Order of the Coif and the Law Review. He is a member of the District of Columbia Bar and the state bars of California and Illinois.

He is played by a much more handsome Gentile in a HBO docudrama based on a book that mentions Mr. Frank once on page 362.

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Suite 300
Washington, DC 20006

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Message

From: Charmley, William [charmley.william@epa.gov]
Sent: 7/23/2018 9:50:48 PM
To: Woods, Clint [woods.clint@epa.gov]; Harlow, David [harlow.david@epa.gov]
Subject: FW: EPA comments on the draft LD GHG and CAFE preamble and Preliminary RIA
Attachments: EO12866 LD CAFE CO2 NHTSA 2127-AL76 EPA PRIA 1805XX_20180601ver_EPAcomments_20180710.pdf; EPA comments_EO12866 LD CAFE CO2 NHTSA 2127-AL76 EPA Preamble 180720_CleanV2.docx

Clint and David –

Here are the documents we were just discussing.

Thanks
Bill

From: Charmley, William
Sent: Monday, July 23, 2018 4:44 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Grundler, Christopher <grundler.christopher@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Mark Kataoka (Kataoka.Mark@epa.gov) <Kataoka.Mark@epa.gov>; 'Simon, Karl (Simon.Karl@epa.gov)' <Simon.Karl@epa.gov>; 'Michael Olechiw (olechiw.michael@epa.gov)' <olechiw.michael@epa.gov>; 'Robin Moran' <Moran.Robin@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: RE: EPA comments on the draft LD GHG and CAFE preamble and Preliminary RIA

Dear all –

The previous version of the EPA comments did not include the edit requesting that the comment period be 90 days. The attached update now has that edits and a comment field making the request.

From: Charmley, William
Sent: Monday, July 23, 2018 4:31 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Grundler, Christopher <grundler.christopher@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Mark Kataoka (Kataoka.Mark@epa.gov) <Kataoka.Mark@epa.gov>; Simon, Karl (Simon.Karl@epa.gov) <Simon.Karl@epa.gov>; Michael Olechiw (olechiw.michael@epa.gov) <olechiw.michael@epa.gov>; Robin Moran <Moran.Robin@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: EPA comments on the draft LD GHG and CAFE preamble and Preliminary RIA

Dear Bill, Justin and Mandy

Attached are our comments on the preamble and the Preliminary RIA.

This is the copy of the Preamble we received last Friday, and the Preliminary RIA comments are on the previous draft from NHTSA.

One additional comment we have on last Friday's Preliminary RIA from NHTSA is that NHTSA should delete from the Preliminary RIA in Chapter 14 the "EPA's Enhanced Flexibilities alternative, as that discussion is already in the Preamble in its entirety.

Please let us know ASAP if you would like us to transmit these comments to OIRA, as I would like to avoid last week's confusion when we provided a markup on the preamble, but that version of the EPA comments on the preamble were not sent to OMB and NHTSA.

Thanks
Bill

Message

From: Maisano, Frank [frank.maisano@bracewell.com]
Sent: 7/23/2018 4:17:07 PM
To: Maisano, Frank [frank.maisano@bracewell.com]
Subject: Jul 23 PRG Energy Update: Tariffs, RFS, Carbon Capture Road Map

Friends,

The British Open was exciting with Tiger Woods reemerging as a challenger. His Saturday round put him on top of a major tournament for the first time since 2010. In the end, it was Italian Francisco Molinari, who played alongside Tiger on Sunday and remains red hot, who pulled away to win the famed *Claret Jug*. And with this being the final week of the *Tour de France*, we should see some fireworks as riders head to the decisive stages in the Pyrenees starting tomorrow. Overall leader Geraint Thomas maintained his advantage of 1:39 over four-time champion and teammate Chris Froome. Tom Dumoulin, the world time trial champion, remained third at 1:50 back. What to do Team Sky? Thomas or Froome? We shall see…

This week is the last for the House before August Recess. There is a lot going on with budget and farm bill issues, with Interior-EPA Approps headed for votes. Senate Energy is also expected tomorrow to vote out DOE nominees including Dan Simmons and IG Teri Donaldson. This is also a big week for tariff issues with steel importers Friday asking the U.S. Court of International Trade for a summary judgment to immediately halt the steel duty. Bracewell's trade policy experts Josh Zive (202-828-5838) and Paul Nathanson (202-828-1715) are all over the issue and can help.

The RFS is again in the news with Friday's court decision hitting EPA for denying waivers to small refiners. As you know this has been a contentious issue with the ethanol activists hammering the waivers despite the fact that there has been no demand loss. Friday's decision is the second in favor of small refiners. The news will be follow by a presser tomorrow hosted by former Hose Energy Chair Henry Waxman and his environmental group Mighty Earth, who will attack the RFS as bad policy. Finally, on Wednesday at 9:15 a.m., the House Energy Enviro Subpanel looks at RINs and the problems they are causing with the RFS. Also, the Senate Energy Committee will look at global oil price issues tomorrow in a hearing.

In another major event Wednesday at Noon, the Carbon Utilization Research Council, ClearPath Foundation and the Electric Power Research Institute will be on Capitol Hill to officially unveil two studies that underscore the promise and benefits of aggressively developing and commercializing U.S.-based carbon capture, storage and utilization technologies. CURC and EPRI will release the 5th Advanced Fossil Energy Technology Roadmap that identifies technologies that can be available by the 2025-2035 timeframe that generate electricity from fossil fuels with significantly reduced carbon dioxide emissions that could be cost competitive with other sources of electricity generation. A companion analysis conducted by CURC and ClearPath will also include modeling provided by NERA Economic Consulting and Advanced Resources International to show that there are significant economic benefits to the U.S. if the technology development outlined in the Roadmap is undertaken under a wide range of scenarios.

Today at 2:00 pm, MIT's Jeremy Gregory will speak at the Business Council for Sustainable Energy (BCSE) for its Energy Thought Leader Speaker Series – a strategic effort to stimulate the development of resilient buildings and infrastructure that will continue through December of this year. Gregory will focus on MIT's resilience-related research, with a special focus on our quantitative analyses, as well as address ways these ideas can be extended to energy networks. The meeting is closed to BCSE members but check in with me at @fvmaisano or MIT's CSHub if you are interested in updates. (You should follow MIT's CS Hub anyway).

Finally this morning – despite House passing a non-binding resolution stating that a nationwide carbon emissions tax would be "detrimental" to the economy – Rep. Carlos Curbelo (R-Fla.) will discuss his legislation to tax on carbon emissions at a forum this morning sponsored by the Columbia Center on Global Energy Policy. The bill calls for the elimination of the federal gas tax and the reinstatement of federal climate regulations if the carbon tax, which would

start out at $23 per ton, fails to curb a certain amount of greenhouse gases. Americans for Tax Reform will hold its own discussion today on what it calls "a giant job-crushing carbon tax," with Grover Norquist and CEI's Marlo Lewis.

Bottomline: In reality, with Congress firmly on record against a carbon tax, the questions remains if a carbon tax is a no go, then what might be a solution that shows meaningful action on advancing innovation and reducing emissions? Perhaps, we can help find that answer soon…

Call with questions…Best,

Frank Maisano
(202) 828-5864
c. (202) 997-5932

FRANKLY SPOKEN

"Importantly, the court rejected EPA's "industry-wide" conclusion that refiners can pass through their RIN costs, recognizing that the ability of a refinery to pass through its RIN costs is a refinery-specific and fact specific determination."

LeAnn Johnson, counsel to Ergon-WV on Friday's court Decision on Small Refiner Waivers.

"Section 232 of the Trade Expansion Act allows the President nearly unfettered discretion to impose tariffs and create other trade barriers if he simply decides that imports threaten to impair U.S. national security. At the same time, the law allows tremendous latitude to the President in determining what constitutes a threat. The United States Constitution provides important checks on the President's power, and the Section 232 trade provision stands in clear violation of that balance."

AIIS President Richard Chriss, announcing they are asking the International Trade court to stop Section 232 tariffs imposed by President Trump

ON THE POD

Bracewell Podcasts Looks at Trade, New EPA Head – The latest episode of the Bracewell Podcast, *The Lobby Shop* is now live on Stitcher, iTunes, SoundCloud, and Google Play Music. This week we are joined by Kyle Kondik, Managing Editor of Larry Sabato's Crystal Ball out of the UVA Center for Politics. Kyle talks mid-terms, key swing states, the current political climate's impact on voting in 2018 and more.

FUN OPINIONS

Banks Calls for State Parity on GHG Impacts – In an op-ed in *The Hill*, former White House climate/energy advisor David Banks says the disparity between poorer and richer states on GHG emissions. Banks wrote "any national compromise must recognize the wealth gap between the states. It should also reflect the fact that richer states generally industrialized earlier and account for the majority of U.S. historical emissions."

Kerrigan: Small Businesses Innovated on Keeping America Working – Karen Kerrigan, head of the Small Business & Entrepreneur Council, recently wrote the White House Workforce Development Initiative is vital to small businesses. She highlighted the July 19th event where President Trump announced his "Pledge to American Workers" and signed an Executive Order (EO) on workforce development. The EO establishes the National Council for the American Worker, which will "convene voices from the private, education, labor, and not-for-profit sectors to enhance employment opportunities for Americans of all ages." Kerrigan added that small businesses are at the cutting edge of training. Entrepreneurs and their teams are implementing innovative and creative approaches that aim to keep their employees fully trained, engaged, and ready for career opportunities that may come their way.

IN THE NEWS

Court Rules in Favor of Small Refiners on RFS Waiver – Late Friday, the US Court of Appeals for the Fourth Circuit handed down an important decision in *Ergon-WV v EPA* arguing that the EPA's denial of a small-refiner exemption (SRE) under the federal renewable fuel standard (RFS) was arbitrary and capricious.

The Case is Significant Given Battle over SREs – The Fueling American Jobs Coalition says the Court agreed with Ergon that the application of the Department of Energy's (DOE) matrix constituted an "error-riddled analysis" of Ergon's petition. The Court noted that DOE's failure to score certain factors were arbitrary and capricious. Most importantly, the Court held that EPA's failure to consider the adverse impacts of high renewable identification number (RINs) prices by simply reiterating the view of one of its staffers that RINs prices were passed through to consumers was insufficient and flawed. The Court said that each refinery faces specific circumstances with respect to their markets that can constrain pass-through of RINs costs and any EPA generic assertion to the contrary was an insufficient basis upon which to deny an SRE. The Court took note that "the dramatic rise in RIN prices has amplified RFS compliance and competitive disparities, especially where unique regional factors exist, including high diesel demand, no export access, and limited biodiesel infrastructure and production."

Full decision – http://www.ca4.uscourts.gov/opinions/171839.P.pdf

Company Counsel Decision Reminder of Hardship Faced from RFS – LeAnn Johnson Koch, Perkins Coie, counsel to Ergon-West Virginia said the 4th Circuit's decision is a reminder to opponents of small refinery hardship that the harm to small refineries is real and that the Clean Air Act requires EPA to relieve it. "The "error-riddled" DOE scoring grossly underestimated the disproportionate economic hardship experienced by Ergon and consequently, impacts on the company's viability. We're grateful to the Court for recognizing it." Johnson also said the decision is also an important reminder to opponents of small refinery hardship that the goal of the RFS is not to expand ethanol consumption, but to increase energy independence and security. "The biofuels industry has doubled down on structural flaws in the rule that discourage blending and harm merchant and small refineries. It wouldn't be so troubling if they weren't at the same time pounding the table about "demand destruction" and urging EPA to violate the Clean Air Act and deny hardship relief to small refineries. Demand destruction and small refinery hardship are the consequences of not fixing the rule to restore a level playing field in the transportation fuels market."

Company: Significant, Disproportionate Hardship from RFS – Ergon-WV said they were pleased to see the 4th Circuit Court ruling which recognizes the significant and disproportionate hardship that RFS places on small refineries. Company President Kris Patrick said a 2011 DOE study predicted that this disproportionate economic hardship would occur, and this is precisely what they witnessed at EWV. Patrick: "Like other small refineries, we operate in rural geographic areas, supplying critical fuel supplies and supporting the local economies with jobs and tax revenue. It is vital that Congress, the EPA, and the DOE continue to protect the important role of small refineries in the U.S. economy."

Case Turns Misleading Ethanol on Head – Ethanol Interests and there Congressional supporters have been so misleading, it's important to remind you of the facts surrounding the program. Congress created the RFS as part of the 2005 Energy Policy Act in an effort to reduce greenhouse gas emissions and expand the nation's renewable fuels sector. Their understanding of the detrimental impact the program could have on small refineries prompted Congress to direct the EPA to grant waivers from the mandate to small refineries that would suffer a "disproportionate economic hardship" in complying with the program. Small refineries are defined as those processing less than 75,000 barrels per day of crude oil. Unlike large integrated refiners which primarily produce gasoline, many small refineries produce diesel fuel in higher proportions. All refiners are required to purchase renewable identification numbers (RINS), which the EPA describes as "credits used for compliance and the 'currency' of the RFS program." This mandate has resulted in an artificial, government-created market for blend requirements beyond what the market will accept, primarily due to diesel-to-gasoline production ratio or "diesel disparity." Fundamentally, this program unfairly disadvantages small refineries, particularly those with higher than average production of diesel.

Obama EPA Abandoned Help to Small Refiners – During the Obama administration, the EPA abandoned the original intent of Congress when establishing small refinery hardship waiver requests by interpreting that the hardship exemption must pose a threat to a refinery's survival as an ongoing operation. In EWV's case, costs directly attributable to the RFS were the refinery's third highest operating expense in 2016, following raw materials and labor.

More on Ergon – Ergon-WV operates a small refinery (23,500 barrels per day) in Newell, West Virginia that primarily produces highly refined paraffinic specialty products and fuels from local Appalachian grade crude. In addition to two small refineries, Ergon also operates an ethanol production facility which Patrick says provides them with a unique vantage point regarding RFS. "The argument touted by ethanol advocates of demand destruction as a result of hardship waivers is simply not based in logic or facts, Patrick said. "EWV blends 10% ethanol with 99% of the gasoline it produces and will continue to do so, even without a mandate. However, EWV cannot pass through its RIN costs and the detrimental impact imposed by the RFS on EWV's high diesel production is unacceptable and counter to the intent of the RFS program." EWV has made significant investments in environmentally friendly processes and technologies over the past three decades."

Steel Importers Ask For End to Tariffs – The American Institute for International Steel (AIIS) and two of its member companies, SIM-TEX, LP and KURT ORBAN PARTNERS, LLC, filed a motion for summary judgment with the US Court of International Trade in an effort to halt enforcement of the law under which tariffs are currently being collected on steel imported to the U.S. The motion follows on a lawsuit filed by the parties in late June in the same court challenging the constitutionality of the statute under which President Trump imposed a 25% tariff on imported steel. Since tariffs were imposed on steel imports earlier this year, the U.S. steel supply chain has experienced significant disruption, with American ports experiencing a sharp drop in throughput and steel-using manufacturers hit with price increases of 50% or more on steel product, coupled with newfound difficulty in obtaining specific types of steel, whether imported or sourced domestically. To date, U.S. Customs and Border Protection has collected in excess of $582 million in tariffs—amounting to a tax imposed on the U.S. economy. AIIS is America's leading voice for the steel supply chain, and the only voice in Washington, D.C. for free and responsible trade in steel. AIIS members, which include railroads and other transportation companies, port authorities, union locals, traders and logistics companies depend on imported steel for their economic well-being. As the tariff reduces the amount of imported steel, it also reduces the revenue of AIIS members, harming their businesses and putting their employees' jobs at risk.

Report: Oil Demand to Peak? – The Consulting firm Wood Mackenzie forecasts global oil demand will peak around 2036 in a new report out this week. According to WM, the peak is due to fuel efficiency gains and the anticipated rise of both autonomous and non-autonomous electric vehicles. Others have suggested a slower glide path which may undercut the WM date.

DOE: US Crude Booming, US Moves to #2 producer – The Energy Department said U.S. crude production reached 11 million barrels per day for the first time, which would place the United States as the second-biggest producer of crude, after Russia, which sources say was producing 11.2 million bpd in early July.

ON THE SCHEDULE THIS WEEK

Heritage Hosts Johnson on Trade Discussion – The Heritage Foundation hosts a discussion tomorrow at 8:00 a.m. on the real impacts of the tariffs, and what the retaliation means for Americans. Sen Johnson will join a panel of experts including the railroad assn's John Gray Maria Zieba of the pork producers and API's Aaron Padilla. The discussion will be moderated by our friend Tori Whiting.

NREL to Look at Caron Economy – Tomorrow and Wednesday, the National Renewable Energy Laboratory holds a summit in Denver on realizing a Circular Carbon Economy. NREL, in collaboration with the USDA and DOE will consider the challenges, opportunities, and needs involved in realizing the CCE. The summit will focus on defining and valuing ecosystem services in the context of a carbon-based economy; renewable fuels and energy; agricultural technology and innovation; land management; carbon cycles and sequestration (both engineered and natural); and lifecycle, sustainability and technoeconomic analyses. Positioning the United States as a major architect of a sustainable and resilient CCE is critical for maintaining economic competitiveness in the future.

Senate Energy Looks at Global Oil Price – The Senate Energy and Natural Resources Committee holds a hearing tomorrow at 10:00 a.m. on factors that impact global oil prices. Witnesses include Columbia University Center on Global Energy Policy's Jason Bordoff, oil market expert Rusty Braziel, former White House Advisor Bob McNally and IEA's Keisuke Sadamori. Prior to the hearing, the Committee will vote out DOE nominees.

House Energy Subpanel to Discuss SPR – The House Energy Committee's Energy panel will hold a hearing tomorrow at 10:15 a.m. on the Strategic Petroleum Reserve. Witnesses will include DOE's Steven Winberg, GAO's Frank Russo and our friend Kevin Book, among others.

House Resources Looks at Coal Use – The House Natural Resources Energy and Mineral Resources Subcommittee holds a hearing tomorrow at 10:00 a.m. on assessing innovative and alternative uses of coal. Witnesses include Michael Klein of Utah's Lighthouse Resources, Arg CEO Julian McIntyre, Wyoming's Ramaco Carbon CEO Randall Atkins and Vernon Haltom of Coal River Mountain Watch.

CSIS To Host EIA Outlook – The CSIS Energy & National Security Program is hosting EIA Administrator Linda Capuano tomorrow for a presentation and discussion of the EIA's International Energy Outlook 2018 (IEO2018). The IEO2018 builds on the IEO2017 reference case, which presented long-term projections of world energy demand by region and primary energy source; electricity generation by energy source; and energy-related carbon dioxide emissions. In particular, this year's outlook offers a macroeconomic perspective regarding the uncertainty in economic growth in India, China, and Africa.

USEA To Discuss Africa Energy – The US Energy Assn will host a forum tomorrow at 10:00 a.m. discuss specific generation and transmission projects currently underway and in the pipeline for development within the region. Please join us in a discussion regarding investment opportunities in various hydropower and wind power projects, as well as a transmission line and interconnection project. N Representatives of West African Power Pool (WAPP) and the Economic Community of West African States (ECOWAS) Regional Electricity Regulatory Authority (ERERA) will speak.

Waxman, Enviro Groups Attack RFS – Tomorrow at 11:00 a.m., former House Energy Chair Henry Waxman and his group Mighty Earth hold a forum on the RFS. It's been more than 10 years since the Renewable Fuel Standard became law. Once touted as a 'green' policy, many in the environmental, conservation, and scientific communities believe the opposite: that the RFS may have been a net-negative – even a disaster -- for the environment. Speaker will include Waxman, NWF's David DeGennaro, and others.

ACORE State of Industry Webinar Set – ACORE Hosts State of the Industry Webinar Focus on International Investments – ACORE and Bloomberg New Energy Finance (BNEF), hold their quarterly State of the Industry webinar on Wednesday at 12:00 p.m. The forum offers the latest intelligence and analysis on renewable energy markets, finance and policy. This quarter's webinar will focus on the increasing trend of financial institutions around the globe who are expanding their renewable energy strategies and providing new capital for North American markets. Speakers will discuss foreign investor strategies for expansion in North American markets, fueled by sustainability targets, ESG scoring and attractive business opportunities; the characteristics of these new market entrants; and U.S. attractiveness in an uncertain policy environment: challenges posed by trade wars, the new tax law and CFIUS. Speakers include ACORE's Rob Gramlich, BNEF's Amy Grace, among others.

Forum to Look at Taiwan Energy – The Global Taiwan Institute and co-sponsor, The Sigur Center for Asian Studies at George Washington University, will hold a forum tomorrow at 12:30 p.m. to explore the future of Taiwan's energy. This event is the third installment of the Civil Society and Democracy Series, which is partially funded by the Taiwan Foundation for Democracy. The panelists will discuss Taiwan's policy and opportunities in sustainable energy, how it will impact the Asia-Pacific region, and what it means for US interests.

House Energy to Look at RINs – With Friday's Court decision, the House Energy and Commerce Environment Subcommittee holds a hearing on Wednesday at 9:15 a.m. on background on Renewable Identification Numbers under

the RFS. Witnesses include CRS Energy and Minerals Manager Brent Yacobucci, Gabriel Lade of Iowa State, Paul Niznik of Argus and energy compliance expert Sandra Dunphy.

Technology Roadmap to be Released – On Wednesday at Noon in the Capitol Visitors Center, the Carbon Utilization Research Council, ClearPath Foundation and the Electric Power Research Institute will host an event Wednesday on Capitol Hill to officially unveil two studies that underscore the promise and benefits of aggressively developing and commercializing U.S.-based carbon capture, storage and utilization technologies. CURC and EPRI will release the 5th Advanced Fossil Energy Technology Roadmap that identifies technologies that can be available by the 2025-2035 timeframe that generate electricity from fossil fuels with significantly reduced carbon dioxide emissions that could be cost competitive with other sources of electricity generation. A companion analysis conducted by CURC and ClearPath will also include modeling provided by NERA Economic Consulting and Advanced Resources International to show that there are significant economic benefits to the U.S. if the technology development outlined in the Roadmap is undertaken under a wide range of scenarios. The event is sponsored by Southern Company, GE, Battelle and others.

House Resources Looks at Puerto Rico Recovery – The House Natural Resources Committee holds a hearing on Wednesday at 2:00 p.m. on the management crisis at the Puerto Rico Electric Power Authority and implications for recovery.

Forum to Look at NET CCS Plant – The US Energy Assn Hosts a discussion on Thursday at 10:00 a.m. to look at NET Power's 50-MW demonstration emissions-free natural gas power plant. NET Power is commercializing a novel power system that produces emissions-free electricity from natural gas for the same cost as conventional power plants. The system, which uses the supercritical CO2 Allam Cycle, is currently being demonstrated at a 50MWth power plant in La Porte, Texas, that is now in operation. A review of the technology will be provided, and an update will be given on the status of demonstration plant testing and operations, as well as commercial facility development.

Wilson Forum to Look at China Green Innovation – On Thursday at 2:00 p.m., the Wilson Center's China Environment Forum is hosting four experts to discuss ways to facilitate financing that will stimulate the market of green and energy-efficient buildings and technologies that China needs to reach its low carbon goals. Xiao Sun, chairman of the Ma'anshan Rural Commercial Bank (MRCB), will discuss how MRCB is promoting green building development as part of their effort to become the world's first completely green bank. Carolyn Szum, program manager at Lawrence Berkeley National Laboratory (LBNL), will discuss their partnership with Citibank and MRCB to create new financing tools for energy-efficient buildings in China. Joe Indvik, the leader of the Department of Energy's Better Buildings Initiative, will discuss how he collaborates with finance executives on expanding access for building owners to attract capital for energy projects in the US. Lastly, Yunhan Mao, from International Finance Corporation (IFC), will briefly introduce IFC's China Climate Finance Advisory program, and the role it plays in greening urban development.

Grid Forum Set for Iowa – The TransGrid-X 2030 Symposium will be held on Thursday in Ames, Iowa. The event will showcase the long-awaited NREL Seam Study—a concept featuring bi-directional high-voltage transmission; 600 GW of wind, solar and gas-fired generation; and a trillion-dollar economic event, if fully built. Our friends Rob Gramlich and former FERC Chair Jim Hoecker will be among the speakers.

IN THE FUTURE

August Congressional Recess – While the Senate will remain in Session, the House will be in recess starting next week.

Senate Environment to Host Wheeler – The Senate Environment Committee will host new acting EPA head Andy Wheeler on Wednesday August 1st.

WCEE Monthly Happy Hour – The Women's Council on Energy and Environment hosts its August Happy Hour on Wednesday, August 1st at 5:30 p.m. at MASA 14 (1825 14th Street, NW)

Tesla Book Discussion Set – Politics and Prose Bookstore hosts Author Richard Munson on Wednesday at 7:00 p.m. to discuss and sign copies of "Tesla: Inventor of the Modern". Drawing on his new book, Richard Munson shines a light on

the man behind the legend and how his unique way of doing things meant some of his most advanced ideas would go unrecognized for decades. Tesla felt inventing required the linking of science and the humanities. Unlike his better-known rival, Thomas Edison, he was not motivated by profit and preferred working in isolation.

Science-Policy Discussion Set – On Thursday, August 2nd, the Women's Council on Energy and the Environment hosts a conversation at Honeywell at Noon featuring two scientists working to shape policy at the federal level. They will discuss the role of science in shaping public policy and offer solutions for a more collaborative relationship between the scientific and policy realms.

EPRI Hosts Electrification Conference – The Electric Power Research Institute (EPRI) hosts the inaugural Electrification 2018 International Conference and Exposition on August 20th to 23rd in Long Beach CA. Hosted by the and sponsored by more than 20 major utilities and organizations, this annual conference will bring together utility leaders, regulators, researchers, academia, vendors, economic development groups, and energy users from diverse manufacturing, transportation, industrial, and agriculture sectors around the globe. SoCo CEO Tom Fanning is among the many speakers.

FRANK MAISANO
Senior Principal
Ext. 5864
Policy Resolution Group

Message

From: Sidley News [snews@sidley.com]
Sent: 5/2/2019 7:50:55 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: New U.S. Office of Management and Budget Memo Changes Processes for Data in Agency Rulemakings and Other Actions - May 02, 2019

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SIDLEY **UPDATE**

New U.S. Office of Management and Budget Memo Changes Processes for Data in Agency Rulemakings and Other Actions

MAY 02, 2019

On April 24, 2019, the U.S. Office of Management and Budget (OMB) issued a memorandum to executive departments and agencies that revises the standards for information used in regulatory functions (Memorandum) with potentially dramatic consequences for the scientific studies and analyses used in certain rulemaking, risk assessments and policy or guidance documents. The Memorandum updates OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452 (Feb. 22, 2002) (2002 Guidelines), which interpreted agency responsibilities under the Information Quality Act, 44 U.S.C. § 3516. Agencies, including the Environmental Protection Agency (EPA), the Department of the Interior, the Food and Drug Administration (FDA), and the Department of Health and Human Services have their own information quality guidelines that implement OMB's 2002 Guidelines.

The 2019 Memorandum directs agencies to expand peer review processes, to increase public access to data, to ensure reproducibility of analyses and to make the request for correction process more responsive. The majority of the changes apply to "influential information," which the 2002 Guidelines define as information that could have a substantial impact on important public policy or private-sector decisions. Agencies retain discretion to designate which information is influential without review by OMB.

READ MORE

Contacts

If you have any questions, please contact your Sidley lawyer or one of the following:

Rebecca Wood, Partner +1 202 736 8663, rwood@sidley.com
Andrew Stewart, Counsel +1 202 736 8854, astewart@sidley.com

Marshall Morales, Associate +1 202 736 8920, mrmorales@sidley.com
Nicole Noelliste, Associate +1 202 736 8680, nnoelliste@sidley.com

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From: American Energy Alliance [info=americanenergyalliance.org@mail230.suw101.mcdlv.net]
on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 6/18/2018 3:09:17 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Let the good times roll

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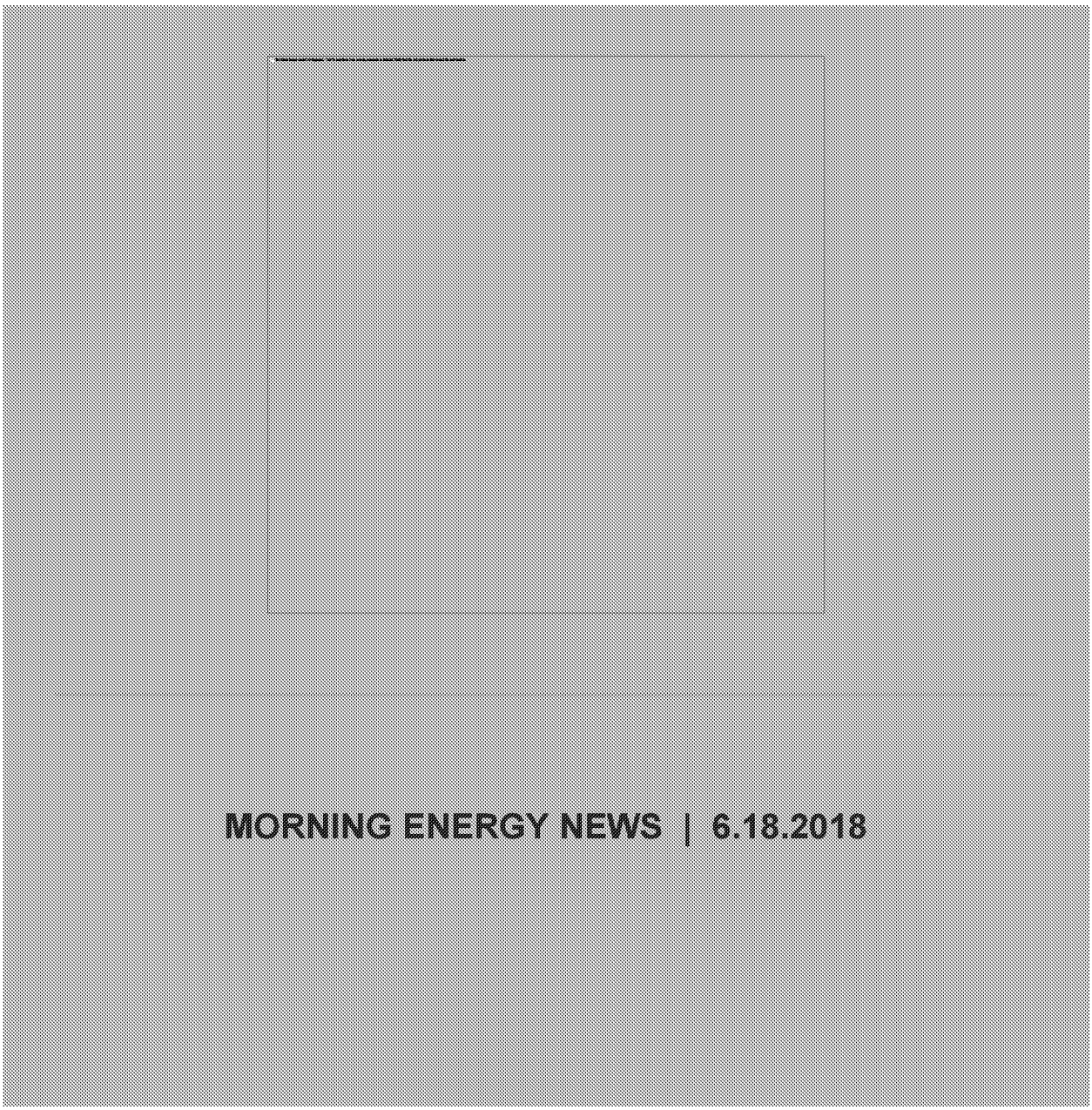

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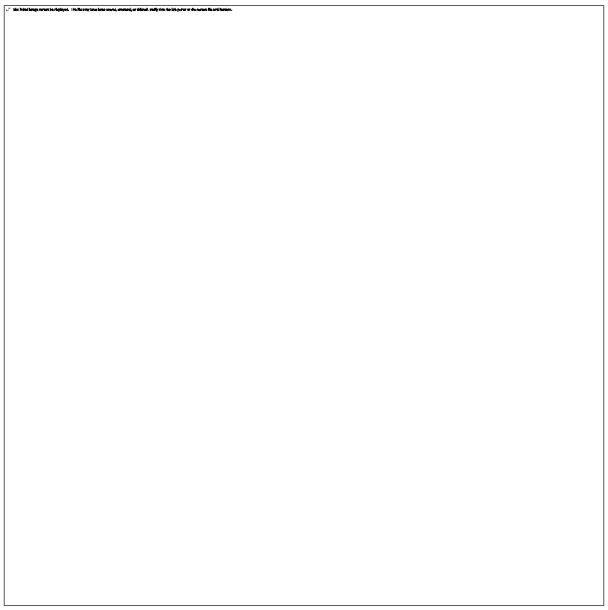
Let the good times roll.

Wall Street Journal (6/13/18) reports: "The world's appetite for oil should remain robust throughout next year even as U.S. production continues to dominate supply growth, the International Energy Agency said Wednesday. In its closely watched monthly oil market report, the IEA laid out for the first time its oil demand forecast for next year, saying it expects demand to grow by 1.4 million barrels a day in 2019, on par with this year. A significant part of that growth will be driven by rising demand for petrochemicals, the agency said."


Use: Total Range Sensor for Digital, Hi-Flo very low Sensor, analog, or Manual. Verify the tank level or the sensor fits and features.

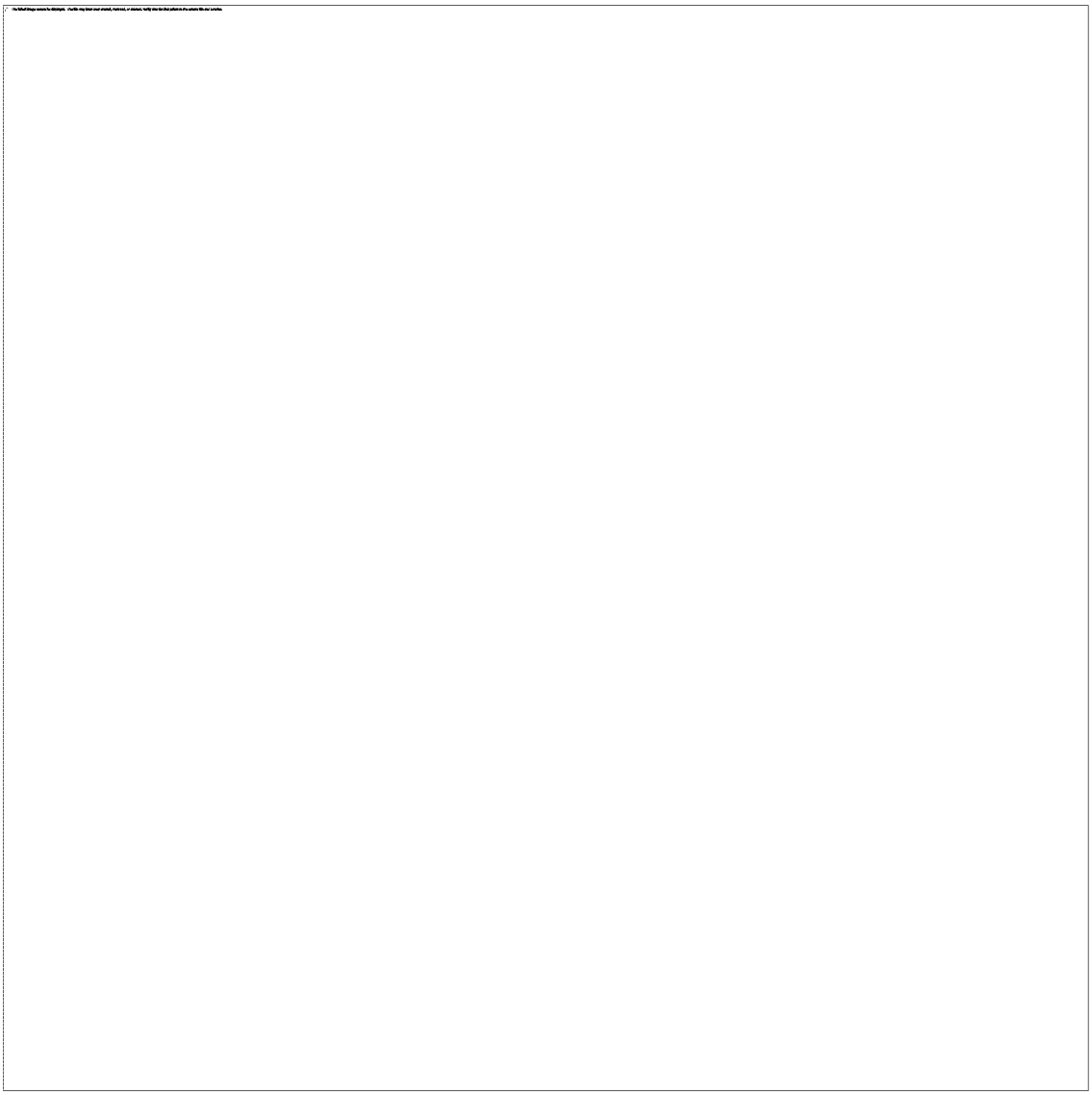
"A new report by the Consumer Energy Alliance (CEA) examines solar power incentive programs in 25 states. The report considers five categories of "direct" incentives: federal tax incentives, state tax credits, state rebates, utility programs (such as net metering), and Renewable Energy Certificates (RECs). Amazingly, in eight states (Massachusetts, California, New Jersey, Rhode Island, Connecticut, Arizona, New Hampshire, and Minnesota), incentives exceed 100 percent of the costs of installing solar PV systems. Massachusetts leads the pack, with incentives equaling 218 percent of installation costs. Subsidies equal or exceed 77 percent of costs in all but five of the states surveyed. Of course, solar subsidies do not fall like manna from heaven. Governments cannot give to some without taking from others. Taxpayers and

consumers foot the bill for solar incentives."

– Marlo Lewis Jr., CEI

Fake support for free markets.

Washington Times (6/17/18) op-ed: "Consider how gargantuan the green energy subsidies are. First, wind and solar receive a tax credit that is basically a 35 percent-off coupon for the energy they supply with taxpayers picking up the tab. If coal or nuclear power got a 35 percent taxpayer subsidy for every kilowatt of electricity they supplied, they would be basking in profits. I helped write and negotiate the just-passed Trump tax bill. When we tried to get rid of the renewable energy tax credit (i.e., create a "free market in energy"), the green lobby went ballistic and told Republicans this would put much of the industry out of business."


The Rollout Image cannot be displayed. A file may have moved, renamed, or deleted, verify that the file is still in the source file or folder.

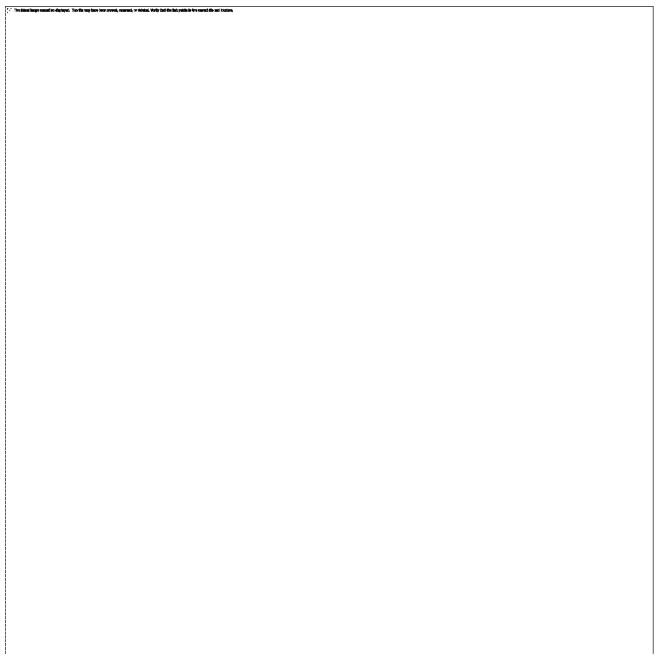
Exxon doubles down on oil. Now if they would just drop this silly carbon tax nonsense.

Bloomberg (6/15/18) reports: "At a time when most of Big Oil is restraining spending, in part because of uncertainty over the future of energy markets, Exxon plans to boost expenditures every year from now until 2025. It wants to invest a total of more than $200 billion, almost all on traditional oil and gas megaprojects around the world, from Brazil to Papua New Guinea. The company has no plans to follow global rivals such as Royal Dutch Shell, Total, and BP into wind, solar, or battery storage."

Have they even read their own party platform?

Daily Caller (6/15/18) reports: "Heading into the midterm elections, Democrats have used rising gas prices as a campaign issue. In fact, the Democratic Senatorial Campaign Committee released an attack ad in May, suggesting oil companies are getting rich from the GOP tax plan as they charge more at the pump. However, Senate Democrats are also attacking Interior Secretary Ryan

Zinke and the Trump administration for opening up the Arctic National Wildlife Refuge — a region in northern Alaska, more widely known as ANWR — to oil and gas exploration."



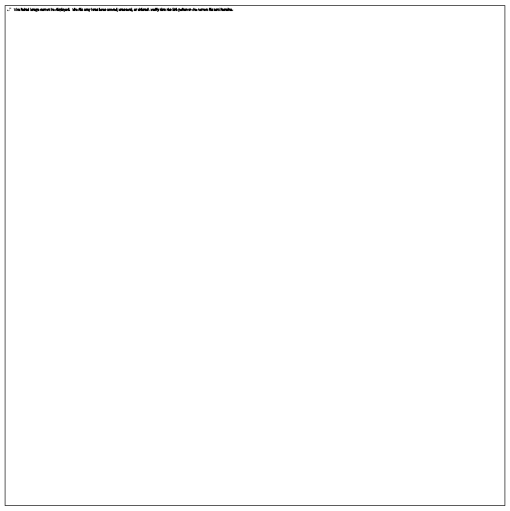
The is getting serious.

The Age (6/6/18) reports: "One of Melbourne's landmark bayside pubs has been forced to ration its heating and cooling and cut down on staff as it faces

power bills that have soared to $24,000 a month... Liberal leader Matthew Guy declared a "utilities power crisis" in the state on the back of the "highest rises in energy prices in Victoria's history". He promised policies to put downward pressure on utilities prices if the Coalition wins government in November's election."

Did anybody see that coming?

Washington Examiner (6/15/18) reports: "China is targeting U.S. energy in response to President Trump's decision Friday to place tariffs on $50 billion in goods from the Asian power...The second round of tariffs, of 25 percent, will include energy commodities from the U.S., including natural gas and crude oil. China didn't announce a start date...The retaliation could harm the president's "energy dominance" agenda, which relies heavily on exporting natural gas and oil. China has become a prime destination, with India, South Korea, and Japan."



Energy Markets

WTI Crude Oil: ↑ $65.18

Natural Gas: ↓ $3.00

Gasoline: $2.89

Diesel: $3.19

Heating Oil: ↑ $210.30

Brent Crude Oil: ↑ $74.16

US Rig Count: ↑ 1128

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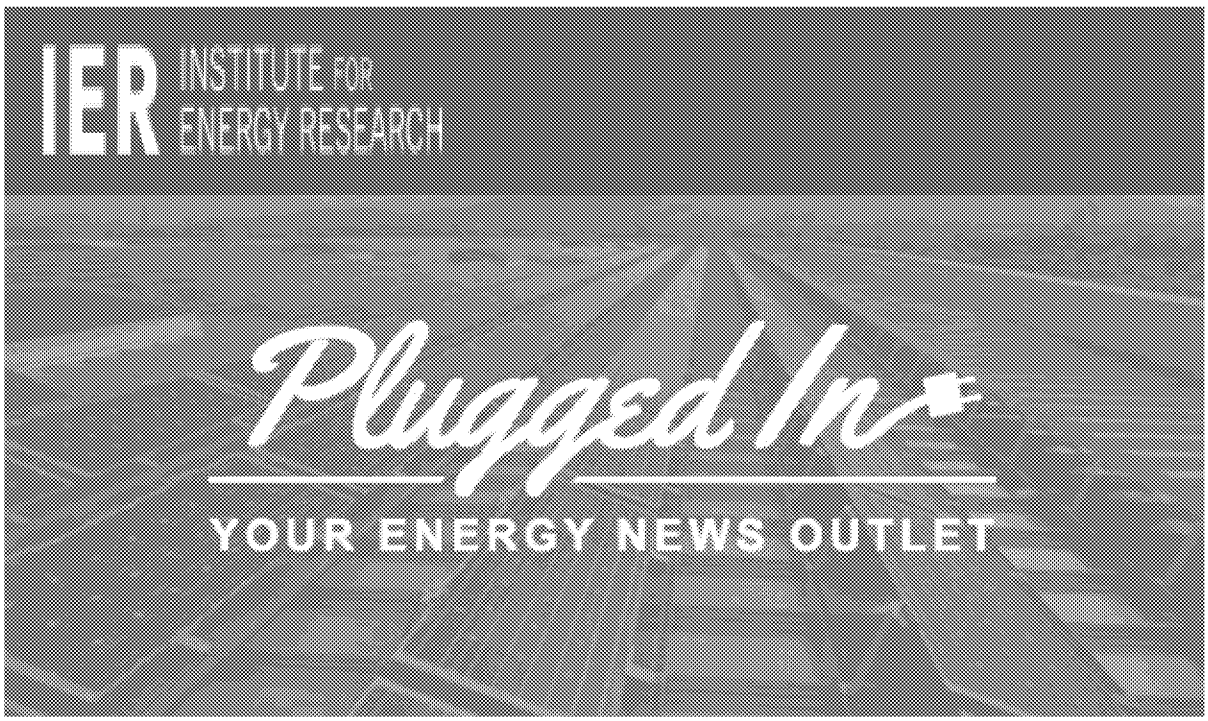
on behalf of Institute for Energy Research [info@ierdc.org]
Sent: 8/16/2018 12:33:40 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Regulations Run Amok



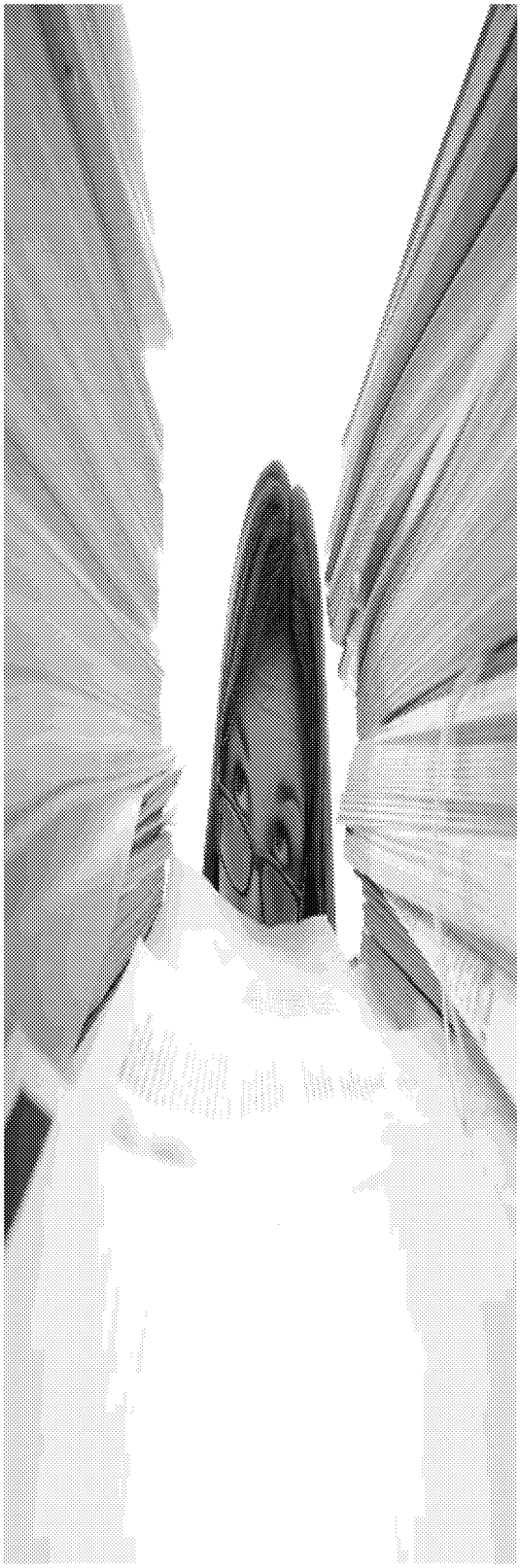
SURGING

This week ***Plugged In*** highlights work from the newest member of the IER policy team, Hunter Pearl, and his research on the National Environmental Policy Act.

If you'd like to reach us at any time with feedback or ideas on what you'd like to see here, please email info@ierdc.org.

NEW FROM IER

Delays, Lawsuits, and Immigration Controls?



The "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA)" could not have come soon enough. When it was first signed into law in 1970, NEPA served as a way for federal agencies to consider the impacts of their actions, helping them to balance a range of interests.

The Many Abuses of NEPA

Today, NEPA is a massively expensive and time-consuming liability that threatens to derail crucial infrastructure and energy development projects. NEPA, as it currently operates, is the model of an outdated regulation that has been exploited beyond recognition from its original purpose.

Read the full article here.

Latest Analysis

- Oil and Gas Pipelines Needed in the Permian Basin
- Canadian Provinces Fighting Back Against Trudeau's Carbon Tax
- Much of Puerto Rico's Wind and Solar Power Is Not Yet Operational

THE WIRE

IER News Highlights

- Director of Policy, Kenny Stein, quoted in the Washington Examiner on energy regulations
- Founder, Robert Bradley, discusses offshore drilling in The Detroit News

THE BUZZ

IER on Social Media

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- Nearly 400 interactions on Tweets
- Over 2,800 interactions on Facebook posts

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THE BREAKER

"It's not just about energy independence, it's about energy dominance... that builds and sustains a free people." –Tim Huelskamp, President of the Heartland Institute, at the America First Energy Conference 2018

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on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 7/13/2018 12:57:01 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Let the good times roll!

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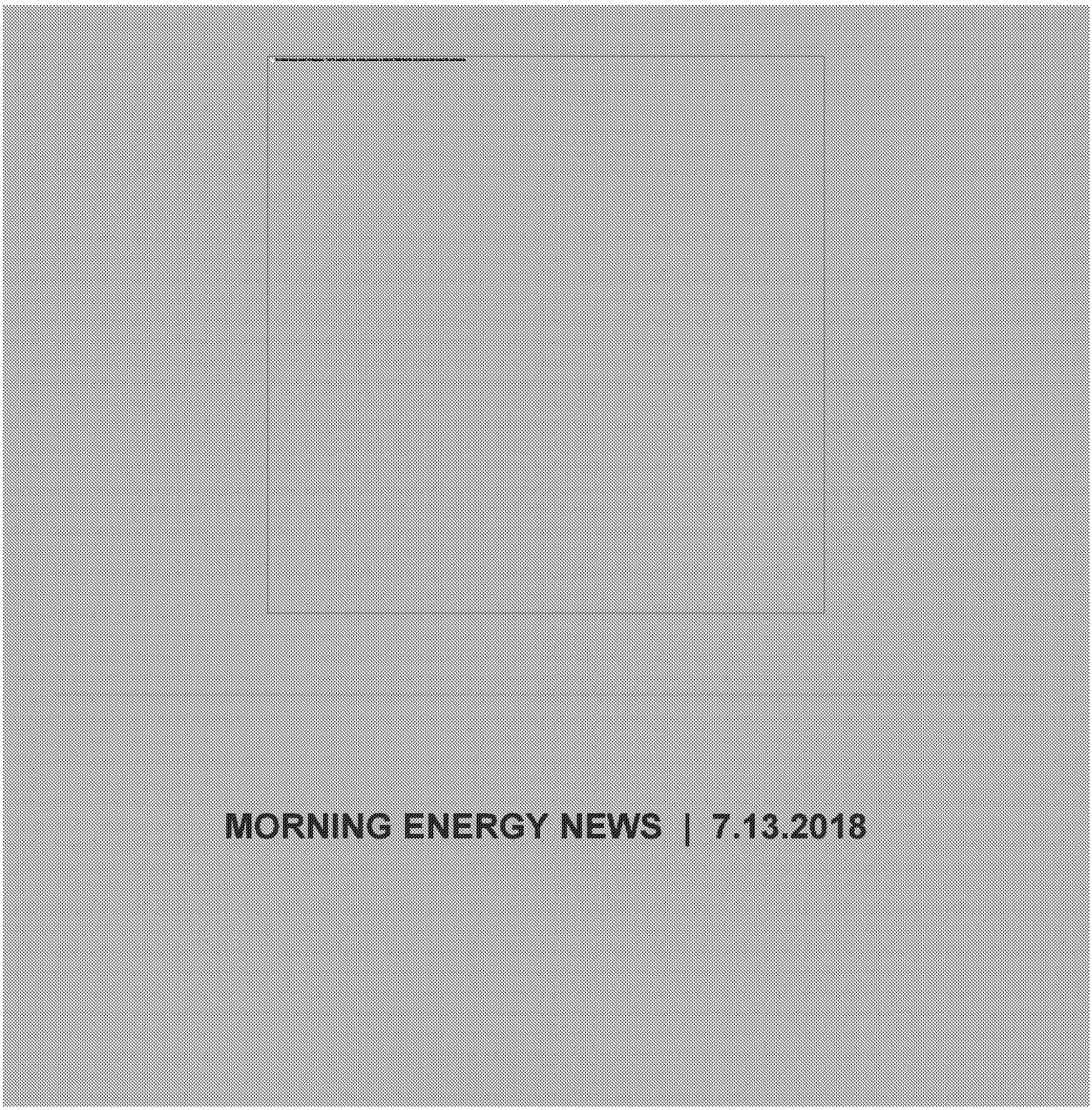

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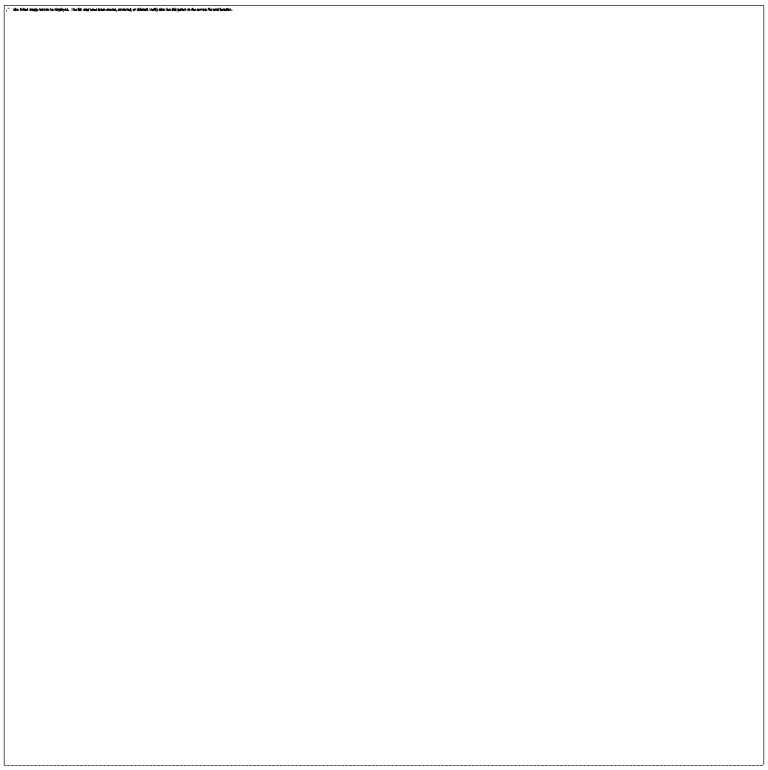
US soon to leapfrog Saudis, Russia as top oil producer.

Washington Examiner (7/11/2018) reports: "The last decade or so has seen a revolution in American energy production, however, led by techniques including hydraulic fracturing, or fracking, and horizontal drilling. Those innovations — and the breakup of the Soviet Union — helped the U.S. narrow the gap. Last year, Russia produced more than 10.3 million barrels a day, Saudi Arabia pumped just under 10 million, and the U.S. came in under 9.4 million barrels a day, according to U.S. government figures. The U.S. has been pumping more than 10 million barrels a day on average since February, and probably pumped about 10.9 million barrels a day in June, up from 10.8 million in May, the energy agency said Tuesday in its latest short-term outlook."



"While keeping these lands locked halts our way of life, it also stunts the economic growth that many states in the West count on. For example, Montana's outdoor economy is over seven billion dollars. Countless Montanans depend on this land for their livelihood. Opening up non-wilderness, public lands to activities such as biking, snowmobiling and hunting will continue to drive economic growth in communities across Montana and the West."

–Sen. Steve Daines, Western Wire

Western lawmakers introduce bills to amend Endangered Species Act.

The Hill (7/13/18) reports: "A group of House lawmakers introduced a package of bills on Thursday to overhaul the federal government's process for protecting imperiled plant and animal species. The ambitious legislative package would accomplish numerous longstanding Republican goals for amending the Endangered Species Act (ESA), like making it easier for the government to remove species from the endangered or threatened lists and preventing organizations from suing to try to get species protected. The bills could also incentivize voluntary conservation efforts, let states enter 'cooperative agreements' for recovery and prioritize data from local communities in making scientific decisions about conservation."

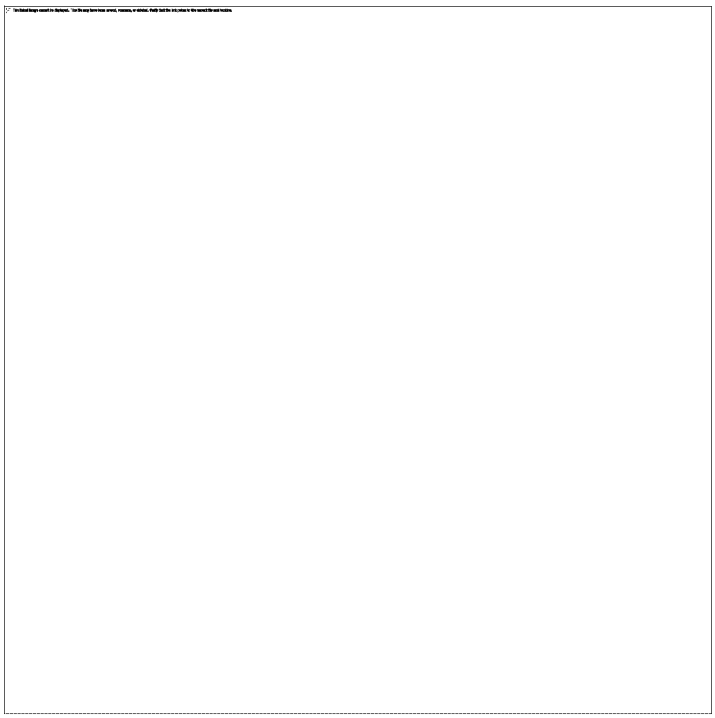
Progress continues at the Interior Department.

Western Wire (7/12/18) reports: "Untangling the overlapping and redundant framework applied to administration and permitting across multiple agencies and even departments, from the U.S. Forest Service to the Bureau of Land Management, Zinke said, is the primary goal of Interior reorganization."

Kavanaugh confirmation could cement Trump's economic legacy.

Washington Post (7/13/18) op-ed: "Indeed, over 12 years on the U.S. Court of Appeals for the D.C. Circuit, Kavanaugh has waged a crusade against the regulatory state that a cynic might think was designed to raise his profile and made him the darling of pro-business, anti-government conservatives. In 2012, Kavanaugh argued, in a dissenting opinion, that the Environmental Protection Agency exceeded its authority when it tried to regulate emissions of climate-changing greenhouse gasses as air pollutants under the Clean Air Act, warning

his colleagues that they had shown 'undue deference' to the environmental agency. Justice Antonin Scalia would later adopt some of the reasoning of his dissent in a Supreme Court opinion overturning those regulations."



President Trump has rendered the Green Climate Fund nearly useless.

Daily Caller (7/11/18) reports: "Trump fulfilled a major campaign promise when he withdrew the U.S. from the Paris Agreement in 2017 and has not given another dollar since. Trump's moves mean the GCF is $2 billion short of what it expected its slush fund to be."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance
Myron Ebell, Americans for Competitive Enterprise, Competitive Enterprise Institute
Phil Kerpen, American Commitment
William O'Keefe, George C. Marshall Institute
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Joe Bast, Heartland Institute
David Ridenour, National Center for Public Policy Research
Michael Needham, Heritage Action for America
Grover Norquist, Americans for Tax Reform
Sabrina Schaeffer, Independent Women's Forum
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government

Adam Brandon, FreedomWorks
Rich Collins, Positive Growth Alliance
Craig Richardson, E&E Legal
The Honorable George Allen, American Energy Freedom Center
Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $70.57
Natural Gas: ↓ $2.79
Gasoline: $2.88
Diesel: $3.17
Heating Oil: ↓ $212.13
Brent Crude Oil: ↑ $74.57
US Rig Count: ↑ 1127

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Subject: Meuller? Meuller? Meuller?

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In the Pipeline

MORNING ENERGY NEWS | 4.19.2019

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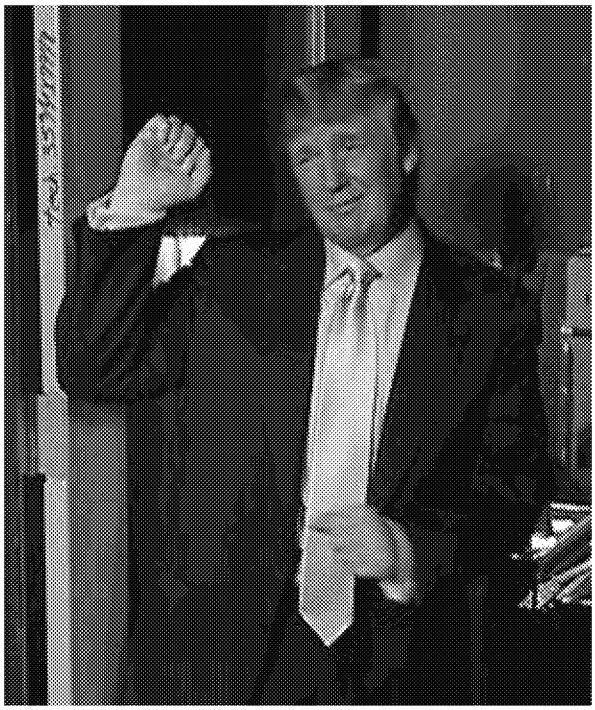
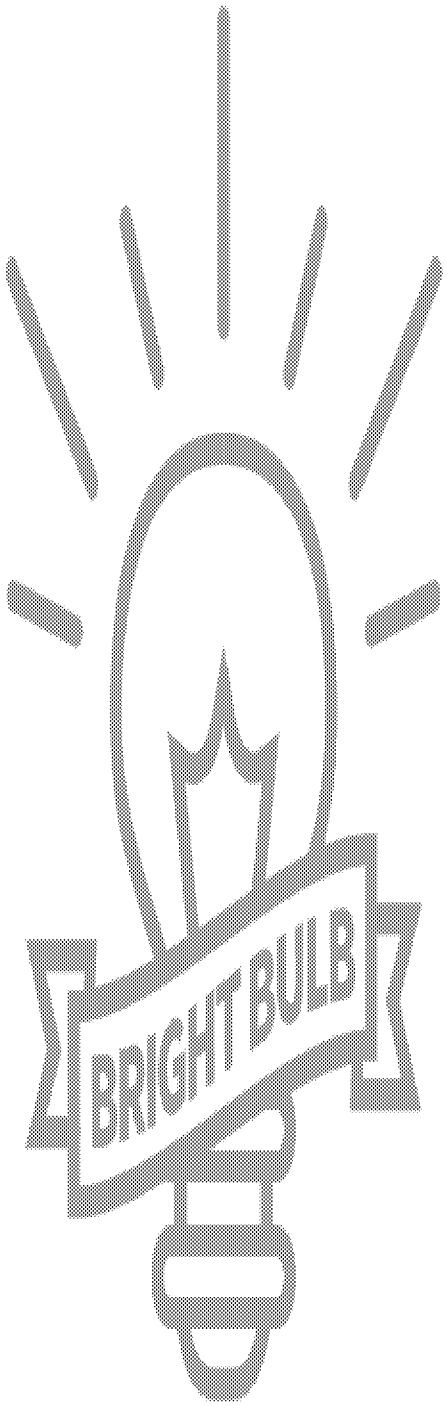
Now that all this Russian collusion business is behind us, let's get busy making North American energy trade great again!

Washington Examiner (4/19/19) op-ed: "Trade with Canada and Mexico supports 11 million U.S. jobs, benefiting every state and every corner of the economy. Under the North American Free Trade Agreement, manufacturing sales supports jobs in 43,000 U.S. manufacturing firms. Canada and Mexico are top markets for American farmers, buying nearly one-third of U.S. agricultural exports. Now add U.S. energy benefits to the long list of reasons to maintain these critical trade partnerships by approving the U.S.-Mexico-Canada-Agreement. Canada and Mexico are our best energy customers, ranking as the top purchasers for a host of fuels. Canada is the top market for U.S. exports of crude oil and fuel blending components. Mexico is the top market for U.S. exports of gasoline, fuel oil, and total refined products."



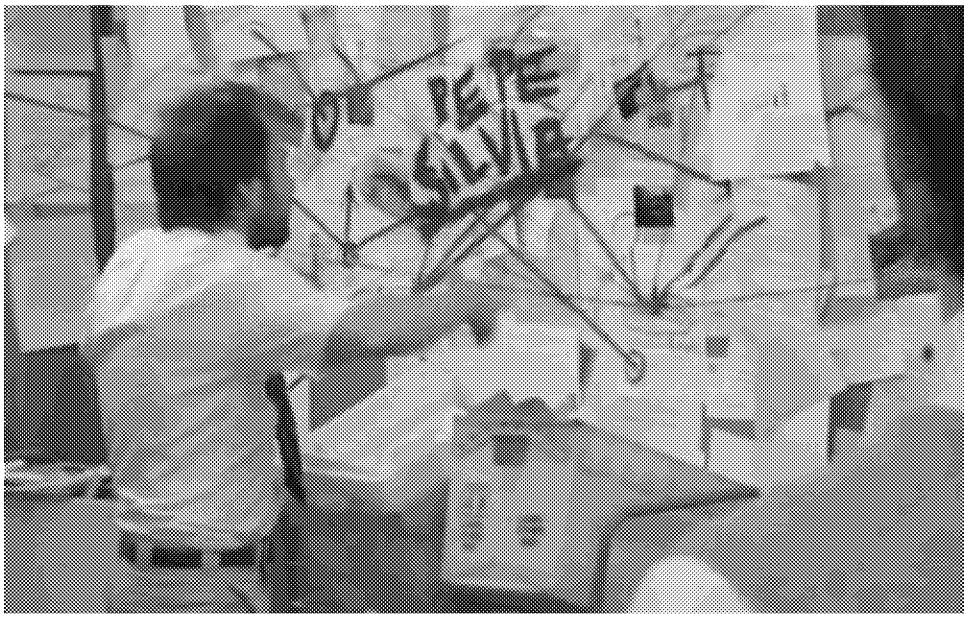


"Some government foolishness has an educational value that compensates for its considerable cost. Consider the multibillion-dollar federal electric-vehicle tax credit, which efficiently illustrates how government can, with one act, diminish its already negligible prestige while subtracting from America's fairness. Senator John Barrasso (R., Wyo.) and Representative Jason Smith (R., Mo.) hope to repeal the tax credit, which probably will survive because it does something that government enjoys doing: It transfers wealth upward by subsidizing affluent individuals and large economic entities."

– George Will, National Review

Bizarre conspiracy theories mark climate hustle in California.

The Daily Signal (4/10/19) reports: "They're back, and they're more preposterous than ever. A federal judge last June tossed a lawsuit by the cities of San Francisco and Oakland against five major energy companies—BP, Chevron, ConocoPhillips, Exxon Mobil, and Royal Dutch Shell. The lawsuits were a ridiculous bid to single out a few energy companies and hold them exclusively responsible for all of Earth's climate change. The plaintiffs sought 'billions of dollars for something that hasn't happened yet and may never happen to the extent you're predicting it will happen,' District Court Judge William Alsup explained."



Boom Shakalaka!

Bloomberg (4/18/19) reports: "America is set to become an even bigger player in the global liquefied natural gas market after the nation's top regulator approved two more projects to export the super-chilled fuel. Tellurian Inc.'s proposed $28 billion Driftwood terminal in Louisiana and Sempra Energy's Port Arthur LNG project in Texas were cleared by the Federal Energy Regulatory Commission in a 3-1 vote in Washington on Thursday, with Democratic Commissioner Richard Glick dissenting. The approvals followed a breakthrough

at the commission, which had been divided 2-2 along partisan lines over how much climate change should be factored into pipeline and LNG projects. That resulted in Venture Global LNG Inc. getting the go-ahead for its $5 billion Calcasieu Pass LNG export terminal in Louisiana in February."

It's hard to watch this magnificent city destroy itself.

The Hill (4/18/19) reports: "New York City approved a sweeping climate legislation package Thursday that is being compared to the Green New Deal. In a 45-2 vote, the city legislature passed the Climate Mobilization Act, which aims to enact the largest carbon reduction measures of any city globally. At the heart of the package is a bill that would require New York's largest residential and commercial buildings to reduce carbon emissions 40 percent by 2040 and 80 percent by 2050. In comparison, the Green New Deal resolution introduced in Congress aims to get the U.S. electric grid running on 100 percent green energy by 2030."

Green deals won't save the world, but access to affordable and reliable energy will.

RealClearEnergy (4/18/19) op-ed: "Around the world, nearly a billion people still don't have access to electricity. Though we take it for granted in the United

States, energy isn't a readily accessible luxury across the planet. It's essential for clean water, modern medical care, refrigeration, transporting goods, and cooking without resorting to burning harmful chemicals indoors. It makes educating our children, conducting business, and heating and cooling our homes easier than ever before. Nearly every activity essential to modern life depends on reliable energy. It has fueled more than 150 years of unprecedented human progress. Maintaining improvements in global health, wealth and prosperity should be the driving force behind our national energy policy. However, both sides of the aisle have now released so-called 'Green Deals.' These competing public relations documents do not serve the American people and ignore the debate we should be having."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance

Myron Ebell, Competitive Enterprise Institute

Phil Kerpen, American Commitment

Andrew Quinlan, Center for Freedom and Prosperity

Tim Phillips, Americans for Prosperity

Grover Norquist, Americans for Tax Reform

George Landrith, Frontiers of Freedom

Thomas A. Schatz, Citizens Against Government Waste

Richard Manning, Americans for Limited Government

Adam Brandon, FreedomWorks

Craig Richardson, E&E Legal

Benjamin Zycher, American Enterprise Institute

Amy Oliver Cooke, Independence Institute

Jason Hayes, Mackinac Center

David Williams, Taxpayers Protection Alliance

Paul Gessing, Rio Grande Foundation

Seton Motley, Less Government

Nathan Nascimento, Freedom Partners Chamber of Commerce

Isaac Orr, Center of the American Experiment

David T. Stevenson, Caesar Rodney Institute

John Droz, Alliance for Wise Energy Decisions

Hon. Tim Huelskamp, Ph.D., The Heartland Institute

Mark Mathis, Clear Energy Alliance

Energy Markets

WTI Crude Oil: ↑ $64.00

Natural Gas: ↓ $2.49

Gasoline: ↑ $2.84

Diesel: ↑ $3.08

Heating Oil: ↑ $207.09

Brent Crude Oil: ↑ $71.97

US Rig Count: ↓ 1032

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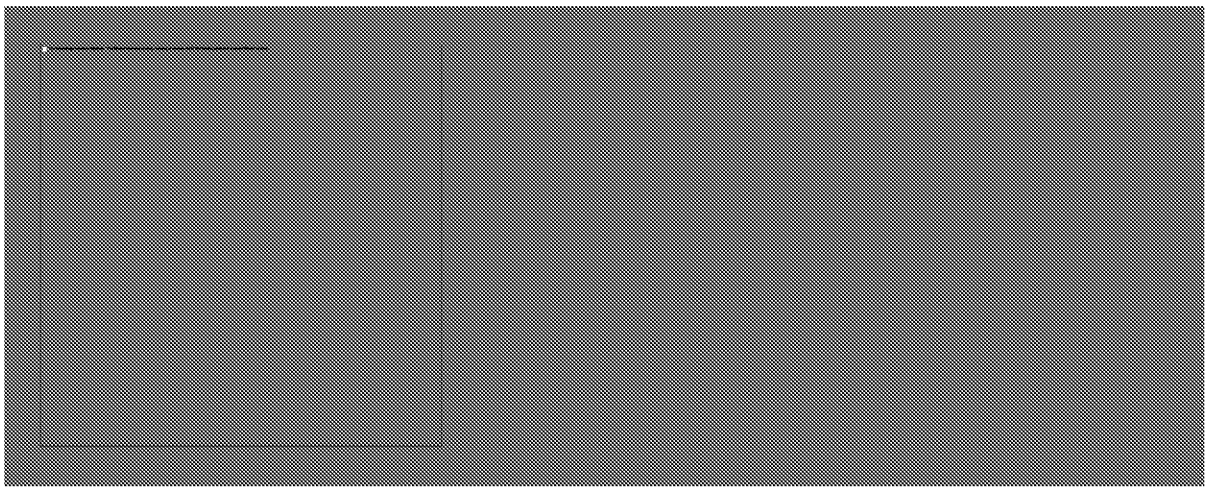
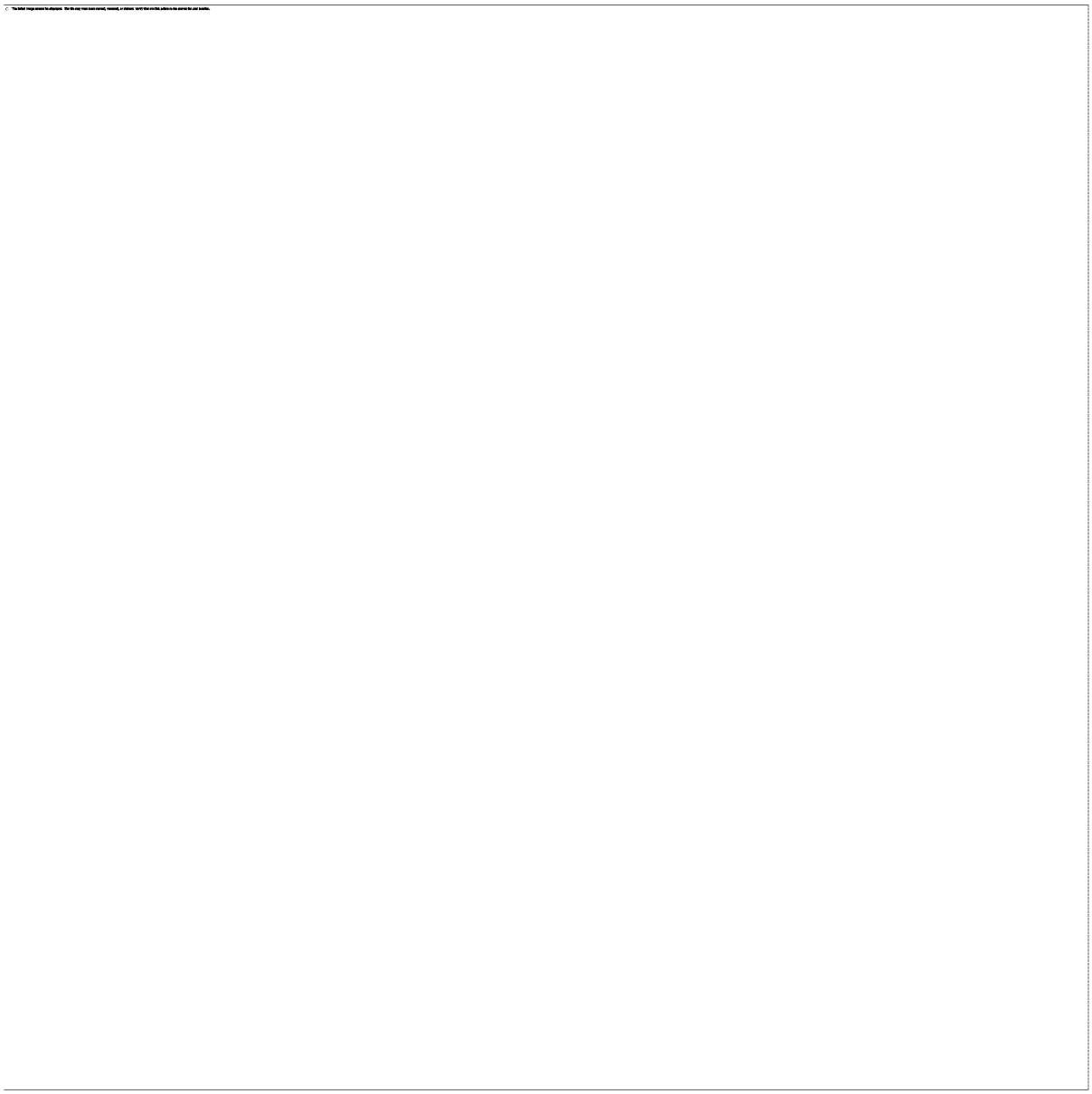
Subject: Enough Hand Outs From Congress



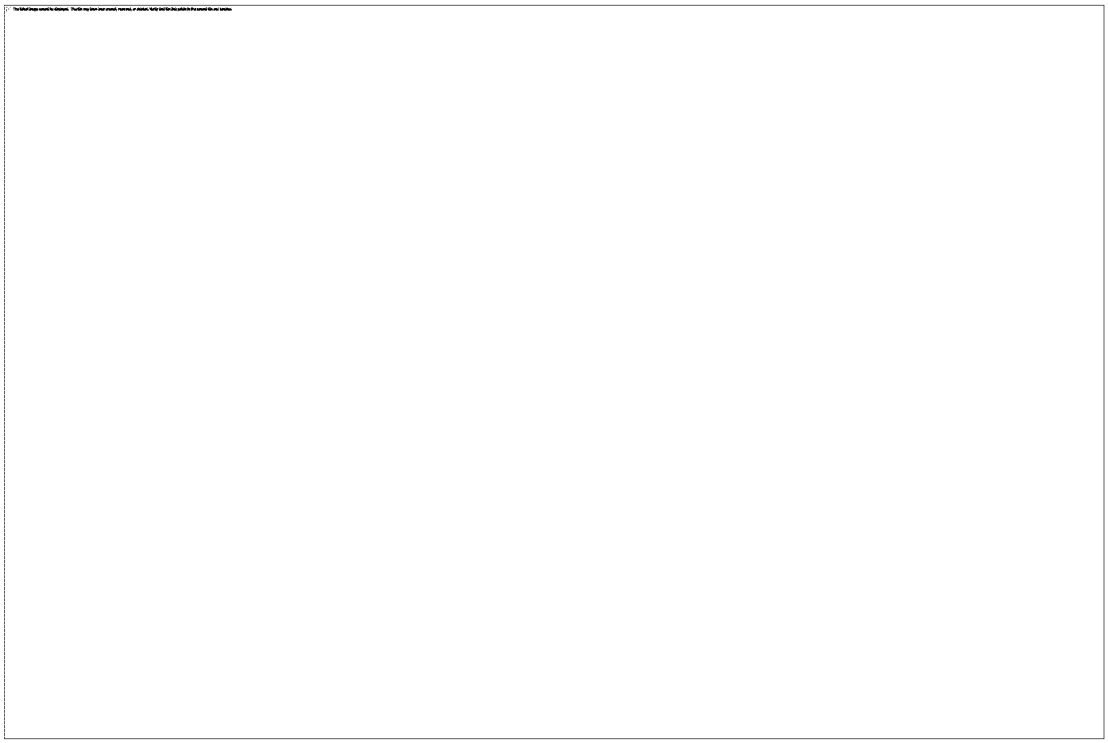


SURGING

Several members of Congress are considering expanding the federal tax credit for electric vehicles despite the cost and unfairness to low-income Americans.

Electric vehicles are more expensive than gasoline vehicles and mostly upper-income Americans are purchasing them, meaning the benefits of the tax credit are not for the general good of the American people.

Congress should not be in the business of subsidizing the luxury cars of America's most well off at the expense of everyone else.



Learn more about the latest effort to expand EV subsidies.

From The Studios

What is POTUS doing about WOTUS?

IER's Kenny Stein joined *Energy Matters with Scott Hennen* to discuss what President Trump is doing to fix Obama-era regulations like the Waters of the United States Rule. They discuss how the rule is blocking urgently needed energy infrastructure and how radical environmentalists are turning to the courts to stop American energy development. Listen now to *Energy Matters 4-30-19.*

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- Jones Act Waiver Would Set U.S. LNG Free
- Hooray! The Green New Deal Will Make Us Happier—By Shrinking the Economy

THE WIRE

IER News Highlights

- IER's Dan Kish quoted in *The Daily Caller* on the Trump administration's offshore drilling plans.
- IER's Robert Bradley quoted by the Heartland Institute on Trump's executive orders on pipeline infrastructure.

THE BUZZ

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THE BREAKER

"Policymakers must take note: higher cost California, New England, and New York demonstrate exactly what happens when an area of the country stands opposed to new oil and gas pipelines."

– Jude Clemente, Editor at RealClearEnergy

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To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Starting Now: The Department of Energy's Actions to Save Nuclear and Coal

The Federalist Society

June 29, 2018

Our Call is Beginning NOW

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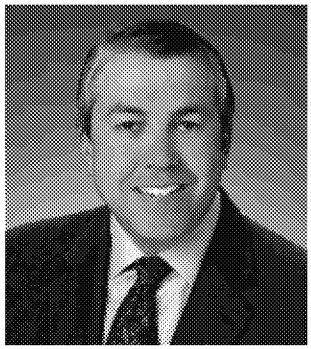
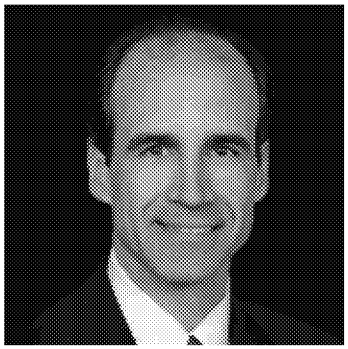
The Department of Energy's Actions to Save Nuclear and Coal

Environmental Law & Property Rights Practice Group Teleforum

Friday, June 29, 2018 | 10:45 AM ET



Raymond L. Gifford
Denver Managing Partner
Wilkinson Barker Knauer LLP



Hon. Mark W. Menezas Under Secretary of Energy
United States Department of Energy

Stephen Moore
Distinguished Visiting Fellow
Project for Economic Growth
Institute for Economic Freedom and Opportunity

Last month, *Bloomberg News* revealed a leaked memorandum from the Department of Energy purporting to be part of a larger order out of DOE invoking the Federal Power Act and Defense Production Act to "save" economically endangered nuclear and coal plants on the basis of fuel security and resilience. This rumored DOE Order would keep certain nuclear and coal units running pending analyses by the national energy labs evaluating the resilience and economic integrity of the nation's electric grid. Critics howled that this is a legally overreaching effort to 'bailout' nuclear and coal units that are being buffeted by market forces that makes these generation units uneconomic. Defenders of potential DOE action retort that the markets are distorted by subsidies, price manipulations and regulatory interventions that preordain the failure of baseload electric units, and that the security and resilience of the nation's electric supply is being jeopardized because of the regulatory mismanagement of resources. Our Teleforum participants will discuss possible DOE action, and what it means for the nation's energy policy.

Dial 888-752-3232 to Participate

Speaker Biographies

Raymond L. Gifford

Raymond L. Gifford counsels communications, electric and gas utilities, and information technology companies on state and federal aspects of regulation, administrative law, and competition policy. He is an expert in public utilities law, and the law and economics of regulation of network industries. Mr. Gifford's law and policy work focuses on the convergence of broadband communications and energy, as well as environmental policy as it applies to the electric industry. He represents clients in state and federal courts and agencies, and serves as an expert witness on utility regulation and its history. He is also a Senior Adjunct Fellow at the Silicon Flatirons Center for Law, Technology and Entrepreneurship, and Co-Directs the Institute for Regulatory Law & Economics at University of Colorado Law School.

Mr. Gifford served as Chairman of the Colorado Public Utilities Commission from 1999-2003. Following that, he served as President of The Progress & Freedom Foundation, a Washington DC-based think-tank that studied the digital revolution as it relates to regulation of network industries. He entered the regulatory law world as First Assistant Attorney General in the Colorado Attorney General's Office. He clerked for the Honorable Richard P. Matsch of the United States District Court for the District of Colorado. Mr. Gifford has authored a number of articles on communications law, public utility regulation and competition policy in network industries. He is a graduate of University of Chicago Law School and St. John's College in Annapolis, Maryland. He is an elected member of the American Law Institute.

Hon. Mark W. Menezas

The Honorable Mark Wesley Menezes, Under Secretary of Energy serves as the Department's principal advisor on energy policy and on a wide array of existing and emerging energy technologies. The Under Secretary is responsible for driving transformative energy policy, and technology solutions through coordinated planning, management and performance of the Department's energy programs.

Prior to being confirmed as Under Secretary of Energy, Mr. Menezes was an executive with Berkshire Hathaway Energy in its Washington, D.C. office. Before joining BHE, Mr. Menezes was a partner at Hunton & Williams LLP, where he headed the Regulated Markets and Energy Infrastructure practice group. Prior to Hunton, he served as Chief Counsel, Energy and Environment, U.S. House of Representatives Committee on Energy and Commerce, serving as chief

negotiator for the House Majority in the enactment of the Energy Policy Act of 2005. Before his service with House Energy & Commerce, he was Vice President with Central and South West, and upon its merger with American Electric Power, served as Vice President and Associate General Counsel for federal and state legislative and regulatory affairs.

Mr. Menezes has been named in National Journal's "Hill 100"-top Congressional staff for his work on both energy and environmental matters. He has been frequent guest speaker and lecturer before numerous associations and civic groups, including legal education seminars where he has been called on to address the nation's energy and environmental policies, utility restructuring, telecommunications, ethics, merger and acquisition practices, and regulatory and legislative processes. He has co-authored numerous articles, a practice manual, and been quoted in the *New York Times*, *Law360*, *Oil and Gas Journal*, Politico as well as interviewed by E&ETV. He's been listed Best Lawyers in America 2013-2016, Corporate Counsel's Top Lawyers 2006-2011, *Washington Post*'s Top Lawyers 2008-2016, and DC Super Lawyers 2012-2016.

Mr. Menezes is a graduate of Louisiana State University receiving both his undergraduate and juris doctor degree. Until joining the government he was a charter member of the Advisory Council, Louisiana State University Law John P. Laborde Energy Law Center, and served on the Board of Directors of the Congressional Chorus & American Youth Chorus.

Stephen Moore

Stephen Moore, who formerly wrote on the economy and public policy for *The Wall Street Journal*, is the Distinguished Visiting Fellow, Project for Economic Growth, at The Heritage Foundation. Mr. Moore, who also was a member of The Journal's editorial board, returned to Heritage in January 2014 -- about 25 years after his tenure as the leading conservative think tank's Grover M. Hermann Fellow in Budgetary Affairs from 1984 to 1987.

As Distinguished Visiting Fellow at Heritage, Mr. Moore focuses on advancing public policies that increase the rate of economic growth to help the United States retain its position as the global economic superpower. He also works on budget, fiscal and monetary policy and showcases states that get fiscal houses in order.

"One of the projects I'm going to be working on is how President Obama has discredited liberal ideas more than anyone," Mr. Moore said in an interview with The Foundry upon his return to Heritage. "Everything he's done has been such a massive failure - from the [economic] stimulus to health-care reform to bailouts to green energy.

Mr. Moore's early career was shaped by three people who had a profound influence on him: Julian Simon, the late Cato Institute scholar; Edwin J. Feulner, a co-founder of Heritage; and Art Laffer, the economist best known for the Laffer curve.

"What makes them so great is they were willing to take on the conventional wisdom. They were subject to a lot of criticism for doing that," Mr. Moore told The Foundry. "Those are the real change-makers."

Mr. Moore calls his creation of the Club for Growth the defining moment of his career. The organization, which he left in 2004, helps elect conservative members of Congress (including Heritage President Jim DeMint when he first ran for Senate).

Mr. Moore next founded the Free Enterprise Fund before joining *The Wall Street Journal*. As senior economics writer for the newspaper's editorial board, he covered Washington policy debates and state issues.

"Because I've been a consumer of think tank material and policy research, I think I have a pretty good sense of what reporters want and how to get it to them in the way they want it," Mr. Moore said. "Being timely - and not just offering opinion but giving them the facts and data is really critical."

Mr. Moore, who grew up in New Trier Township, Ill., received a bachelor of arts degree from University of Illinois at Urbana-Champaign. He holds a master's of arts in economics from George Mason University.

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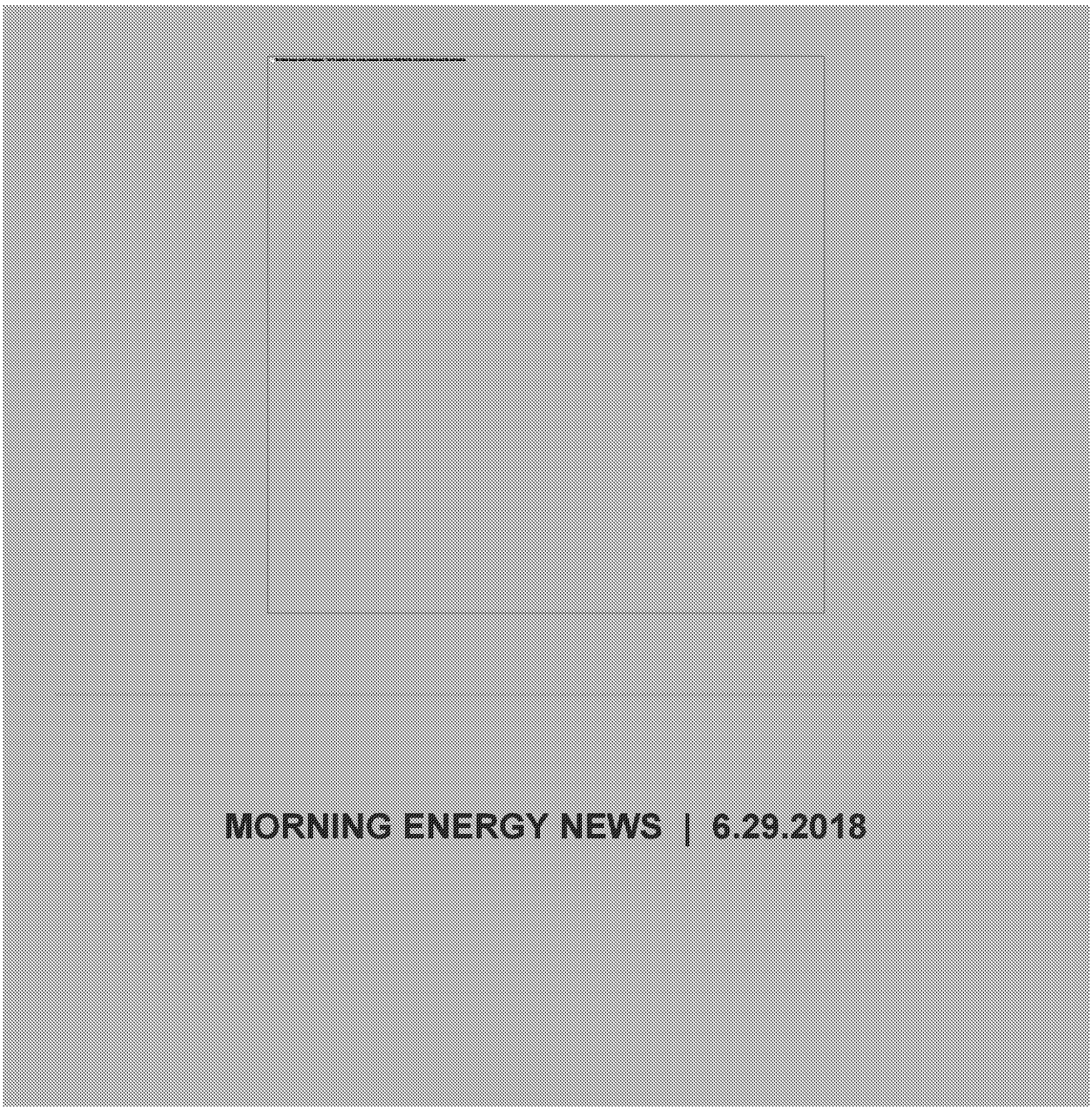

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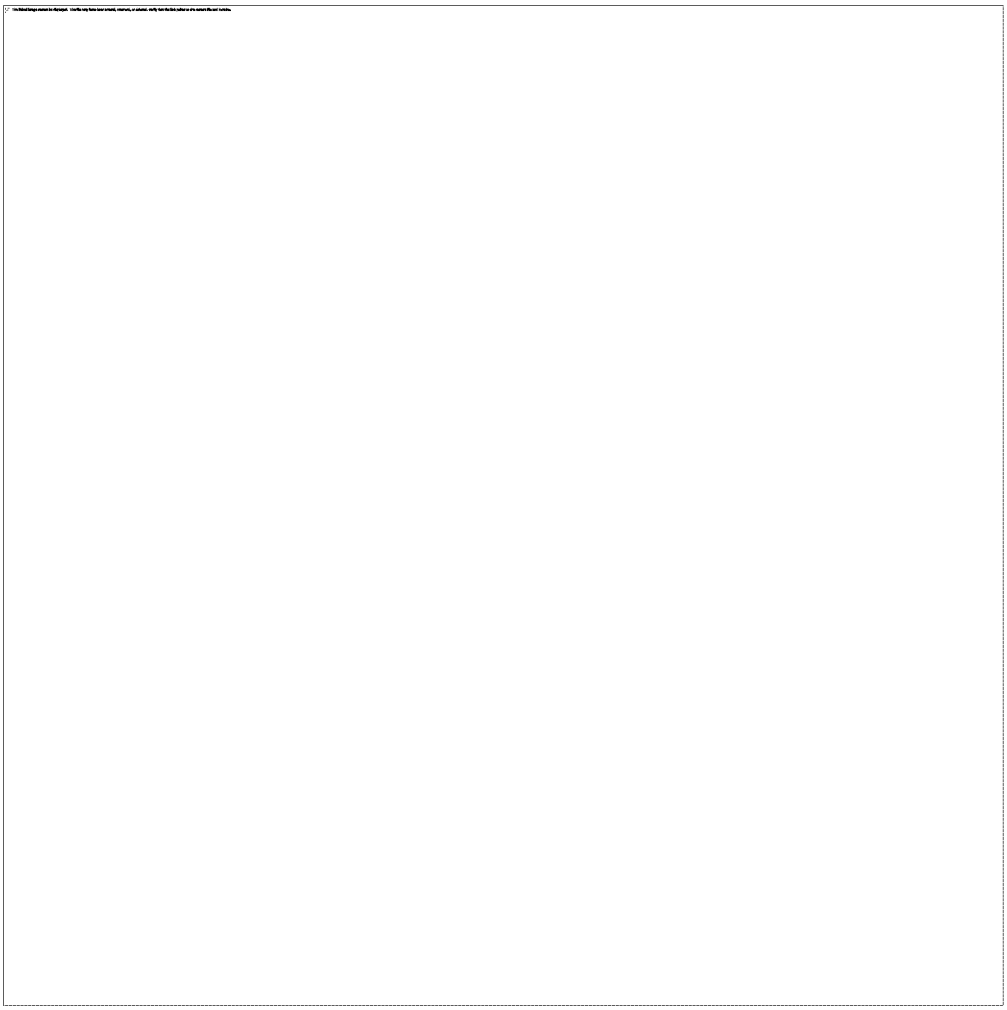
It was fun while it lasted.

E&E News (6/28/18) reports: "Robert Powelson is giving up his seat at the Federal Energy Regulatory Commission to take over the leadership of the lobby representing the nation's private water companies. Powelson, a Republican, made the announcement on Twitter this afternoon. 'It is with mixed emotions that I issue the following statement. It has been an honor to serve this great country. My family and I are deeply appreciative of this opportunity. FERC is a world class organization. Thanks to you, fellow FERCians!' he wrote."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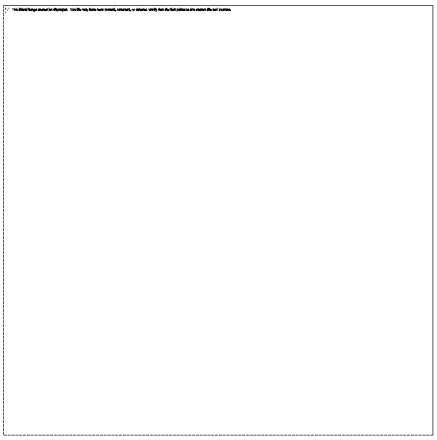

"The simplest and most effective way to [reduce climate change] is by collecting a rising carbon fee from fossil fuel companies at domestic mines and ports of entry. Economists agree: If 100 percent of this fee is distributed uniformly to the public, the economy will be spurred, GNP will rise, and millions of jobs will be created."

- James Hansen, *retired director of the NASA Goddard Institute for Space Studies*

The tab left for American consumers? Not exactly priceless.

E&E News (6/28/18) reports: "Energy Secretary Rick Perry said today that his agency is working to determine the cost of a plan under consideration to assist struggling coal and nuclear plants. 'We don't have a dollar estimate at this particular point in time. There's actually a piece of work being done at this point in time; hopefully, in the not-too-distant future, we can hold that out to you,' he said during a press availability at the World Gas Conference. But Perry also maintained that the dollar figure of the plan, which would involve directing electric grid operators to make payments to keep coal and nuclear plants running, is unimportant. 'You cannot put a dollar figure on the cost to keep America free, to keep the lights on,' he said."

Market price? What market are you shopping at?

CNBC (6/28/18) reports: "Tesla is sending out e-mails to all Model 3 reservation holders in North America this week informing them that their electric sedans are ready to order and asking for an additional $2,500 to fulfill their orders... Would-be Model 3 owners already put down a $1,000 refundable deposit to "reserve" one of Tesla's Model 3s. Those reservation holders must pay an additional $2,500 to turn their reservations into an order, at which point

the original $1,000 deposit goes towards the overall payment for the car. Buyers can cancel their orders within 3 days for a full refund, the company confirmed, but after that their money is Tesla's for good. All money paid up front goes toward the price of the car."

Not convinced.

The Hill (6/28/18) reports: "A top House Republican says he isn't convinced that two leading green groups aren't in cahoots with China and Japan to influence United States environmental policy, despite their ardent denial. Rep. Rob Bishop (R-Utah) said Thursday he still suspects that two groups — Natural Resources Defense Council (NRDC) and the Center for Biological Diversity (CBD) — could be acting as foreign agents, based on lawsuits they've filed against U.S. military actions in Asia and the Pacific Ocean."

"When China awakes, she'll shake the world."

Columbia University (6/27/18) commentary: "In 2017, China was the world's fastest-growing natural gas market. Consumption grew by 15%, more than twice the rate of economic growth. Liquid natural gas (LNG) imports grew by a staggering 46%. Government targets imply strong natural gas demand growth for at least the next decade—although infrastructure constraints could limit

consumption in the short and medium terms... China is shaking up natural gas markets as it emerges as the world's leading LNG importer in the next decade. Chinese LNG demand will be instrumental in investment in LNG supply around the world, including—potentially—the United States."

Sorry, Steyer, you can't sue your way to climate policy.

Washington Examiner (6/28/18) op-ed: "Courts are appropriate for settling legal disputes. They should not be setting environmental policy that has a profound impact on countless aspects of our daily lives and the continuing prospects for a strong and vibrant economy...Consider, for example, the lawsuit brought by Our Children's Trust. According to the lawyer for the organization, 'The courts are our last, best hope at this moment of irreversible harm to our planet and life on it...The political branches of government have had decades to stop destroying our climate system; now only court-ordered mandates will stop the destruction our governments are perpetuating, and increasingly supporting.'"

***If you oppose a carbon tax, please** contact us to take a stand.*

Tom Pyle, American Energy Alliance
Myron Ebell, Americans for Competitive Enterprise, Competitive Enterprise Institute
Phil Kerpen, American Commitment
William O'Keefe, George C. Marshall Institute
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Joe Bast, Heartland Institute
David Ridenour, National Center for Public Policy Research
Michael Needham, Heritage Action for America
Grover Norquist, Americans for Tax Reform
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Craig Richardson, E&E Legal
The Honorable George Allen, American Energy Freedom Center
Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↑ $73.55
Natural Gas: ↓ $2.94
Gasoline: $2.85
Diesel: $3.16
Heating Oil: ↑ $218.35
Brent Crude Oil: ↑ $79.19
US Rig Count: ↑ 1112

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on behalf of American Energy Alliance [jmcgillis@energydc.org]
Sent: 4/2/2018 5:03:15 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Free-Market Coalition Supports CAFE Reform

FOR IMMEDIATE RELEASE
April 2, 2018

MEDIA CONTACT: JORDAN McGILLIS
202.621-2947

Free-market coalition supports fuel economy reform, fairness for American drivers

"The fundamental question associated with this mandate is clear: who should decide what cars and trucks consumers should buy?"

WASHINGTON – This afternoon the American Energy Alliance and ten co-signing organizations sent a letter to Transportation Secretary Elaine Chao and EPA Administrator Scott Pruitt expressing support for the joint effort to reform the Corporate Average Fuel Economy program in favor of lower costs and consumer choice.

"The entire mandate is a relic of the narrative of scarcity. The surge in American energy production has rendered it moot. Moreover, it should be clear to everyone that decisions about what kinds of cars people buy and drive should be made by the consumers themselves, not bureaucrats in Sacramento," said AEA President Thomas Pyle.

The text of the letter can be read below:

Dear Secretary Chao and Administrator Pruitt:

We are writing to thank you for your principled leadership on numerous issues, but most especially on federal fuel mandates, including the Corporate Average Fuel Economy (CAFE) standards program.

As you know, the CAFE program is riven with problems. While we believe repealing the entire program is appropriate and warranted, we are pleased that the Department of Transportation (DOT) and the Environmental Protection Agency (EPA), under your leadership, are taking meaningful steps to reduce the burden and irrationality of this outdated and unnecessarily complicated mandate.

As your agencies examine the mandate and its next steps, we encourage you and your team to remain focused on the fundamental problems with the program.

Cost to consumers. According to the National Auto Dealers Association, the existing mandates would cause the price of an average vehicle to increase by $3,000 in 2025. Research from The Heritage Foundation concluded that repealing the CAFE mandate would save 2025 car buyers at least $7,200 per vehicle. Additionally, we understand that the DOT may have modeling that indicates that drivers may never recover the costs imposed by the next sequence of mandates. These significant increases in the average price of a vehicle are a hidden regressive tax on American families, pricing millions of consumers entirely out of the new car market, especially the poor.

Consumer choice. Automakers are now being forced to design vehicles not for what consumers want but for what regulators want. The fundamental question associated with this mandate is clear: who should decide what cars and trucks consumers should buy, consumers themselves or unelected bureaucrats in Sacramento?

Inefficiency. As originally created, Congress authorized one regulator, the National Highway Traffic Safety Administration (NHTSA), to carry out the program. Today, three different regulators — NHTSA, EPA, and the California Air Resources Board (CARB) — are responsible for implementing the federal mandate under three different laws using three different standards. It is arguable that the EPA and CARB programs should not exist at all, as the EPA program is duplicative of the CAFE program, and the CARB program is preempted under federal law, which was ignored by the previous Administration.

It's a relic. What started as a mandate in the mid-1970's to reduce foreign imports of oil was changed by the previous Administration to an environmental mandate. Its foundational assumption — that oil is becoming scarce and needs to be rationed by the government action — has proved false. The entire mandate is a relic of the narrative of scarcity. The surge in American energy production has rendered it moot.

As a productive first step towards genuine reform of this program, we hope you will protect and enhance consumer choice to the maximum extent possible. Additionally, any actions taken as part of this mandate need to ensure that costs to consumers are minimized. Finally, we hope you will restore the program to its original legal regime as laid out by Congress.

Thank you again for your leadership on this issue. We stand ready to help you and your team in any way.

Sincerely,

Thomas Pyle, American Energy Alliance

Michael Needham, Heritage Action

Phil Kerpen, American Commitment

Rick Manning, Americans for Limited Government

Brent Wm. Gardner, Americans for Prosperity

Myron Ebell, Competitive Enterprise Institute

Mike Stenhouse, Rhode Island Center for Freedom and Prosperity

Dan Peterson, James Madison Institute

Paul Gessing, Rio Grande Foundation

Adam Brandon, FreedomWorks

David T. Stevenson, Caesar Rodney Institute

Grover Norquist, Americans for Tax Reform

For a PDF of the letter click here.

For more information about the CAFE mandate, click here.

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For media inquiries, please contact Jordan McGillis
jmcgillis@energydc.org
202.621.2947

AEA is a not-for-profit organization that engages in grassroots public policy advocacy and debate concerning energy and environmental issues. AEA is the advocacy arm of the Institute for Energy Research, a tax-exempt public foundation that conducts intensive research and analysis on global energy markets.

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on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 4/2/2018 2:32:25 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Calls This Week -- April 2, 2018

April 2, 2018

Teleforum Calls This Week

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China: Hegemonic Gambits and Asymetrical Adventurism

International & National Security Law Practice Group Teleforum

Monday, April 2, 2018 | 2:00 p.m. ET

Sadanand Dhume
Resident Fellow
American Enterprise Institute

Dr. June Teufel Dreyer
Professor
University of Miami

Moderator: Karen J. Lugo
Founder
Libertas-West Project

China's ambitions are seemingly limitless. Early phases of the multi-nation "One Belt One Road" trading infrastructure reveal that China may intend to establish itself as the fulcrum of a new international trading system, which could enmesh participating countries in debt traps with Beijing gaining critical installations as collateral collections. China's geopolitical relations with Japan and North Korea are of vital interest to the United States. China's designs on islands in the South and East China Seas continue to escalate, now challenging territory claimed by Japan, Viet Nam, Taiwan, the Philippines, Malaysia, and Indonesia. What is the range of possible U.S. responses?

Is the FDA's Rule on Cigars & Vaping Products Constitutional?

Regulatory Transparency Project Teleforum
Tuesday, April 3, 2018 | 12:00 noon ET

Michael J. Edney
Partner
Norton Rose Fulbright

Todd F. Gaziano
Director

Devon Westhill
Director

Center for the Separation of Powers
Pacific Legal Foundation

Regulatory Transparency Project
The Federalist Society for Law and Public Policy Studies

Invoking the Tobacco Control Act, the FDA issued an omnibus regulation of cigars, pipe tobacco, and vaping products in 2016. That Rule required all of these products to go through an FDA review process similar to that for prescription drugs and medical devices and to bear large warnings covering 30 percent of two panels of each package and 20 percent of all advertisements-even though some vaping products contain no tobacco or nicotine. The Rule also prohibits truthful statements about the products, including whether they contain tobacco or not, without costly FDA pre-approval, and the speakers bear the burden to prove the net value of their speech to consumers as a whole, whatever that means. Although the Trump Administration delayed some aspects of the Rule, current and delayed mandates threaten the vitality of major industry sectors, including the large health warnings and prior approval of truthful speech.

In addition to the usual regulatory questions, our speakers raise fundamental constitutional challenges to the Rule. Mr. Gaziano and Pacific Legal Foundation are representing nine vaping retailers and harm reduction advocates who filed three lawsuits arguing that the Rule is invalid because it was issued by an FDA employee who is not constitutionally authorized to issue regulations pursuant to the Appointments Clause. Those suits raise key questions of democratic accountability and Executive Power: Who has the authority to impose a massive web of regulations on an entire industry?

Mr. Edney represents several cigar and pipe tobacco trade associations and other individual cigar manufacturers and retailers challenging the Rule. Even with the postponement of some compliance deadlines, the Appointments Clause and First Amendment challenges in both sets of cases are ripe. If the FDA's arguments prevail, the government could require large warnings blanketing any package or advertisements for virtually any product and ban truthful statements about those products without bureaucratic pre-approval.

Self-Driving Vehicles: Addressing the Challenges of Groundbreaking Innovation

Regulatory Transparency Project Teleforum

Wednesday, April 4, 2018 | 12:00 noon ET

Jamie Boone
Senior Director
Government Affairs
Consumer Technology Association

Ryan Hagemann
Director of Technology Policy
Niskanen Center

Devon Westhill
Director
Regulatory Transparency Project
The Federalist Society for Law and Public Policy Studies

Self-driving vehicles may be on American roads sooner than many think. As a result, the Department of Transportation and National Highway Traffic Safety Administration have been increasingly focused on examining the potential regulatory barriers calling for comments on various federal motor vehicle safety standards (FMVSS) that need to be changed and updates to the existing policy guidance on self-driving vehicles. Accommodating the deployment of self-driving vehicles will necessitate addressing outdated FMVSS, current definitions of "driver" or "operator," cybersecurity and privacy concerns, and a regulatory landscape where various authorities are divided between states and the federal government.

Who Is Paying for that Lawsuit?

Litigation Practice Group Teleforum

Thursday, April 5, 2018 | 2:00 p.m. ET

John H. Beisner
Partner
Skadden, Arps, Slate, Meagher & Flom LLP

Travis D. Lenkner
Senior Advisor
Buford Capital

The advisory committee on the Federal Rules of Civil Procedure is considering proposed amendments to Rule 26 that would require disclosure of litigation financing arrangements. Specifically, the proposal would require disclosure of any agreement under which any person, other than an attorney permitted to charge a contingent fee representing a party, has a right to receive compensation that is contingent on, and sourced from, any proceeds of a civil action. Travis Lenkner, a senior advisor at litigation finance firm Burford Capital, and John Beisner, a partner at Skadden, Arps, Slate, Meagher & Flom LLP will join us to discuss the proposal.

Beneficial Ownership

Litigation and Corporations & Antitrust Practice Group Teleforum
Friday, April 6, 2018 | 12:00 noon ET

David R. Burton
Senior Fellow in Economic Policy
Roe Institute for Economic Policy Studies

Clay R. Fuller
AEI Jeane Kirkpatrick Fellow
American Enterprise Institute

Institute for Economic Freedom and Opportunity
The Heritage Foundation

A beneficial owner is a person who receives the benefits of ownership without being the official, on-record owner. Section 8 of the proposed Bank Secrecy Modernization Act of 2017 contains a new rule which would require a new corporation or limited liability company to submit a report to the U.S. Treasury Financial Crimes Network Enforcement Office of the names and personal information (addresses, passport, and driver license number) of every beneficial owner of the new corporation. They must also send updates within 60 dates if ownership changes. Clay Fuller of AEI and David Burton of Heritage will join us to discuss the new legislation and what it would mean for American businesses

Previously Recorded Calls

Qualcomm Litigation Update

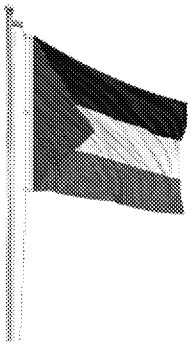
Corporations, Securities, & Antitrust and International & National Security Law Teleforum

On March 5, the committee on Foreign Investment in the United States (CFIUS) raised objection to the hostile take over a bid of Qualcomm by Broadcom. Shortly there after, the administration announced that it was blocking the deal altogether. Join us for a detailed analysis of these decisions, and what they mean for U.S. national security and business.

[Listen]

Sokolow, et al v. Palestinian Liberation Organization Litigation Update

International & National Security Law Practice Group Teleforum

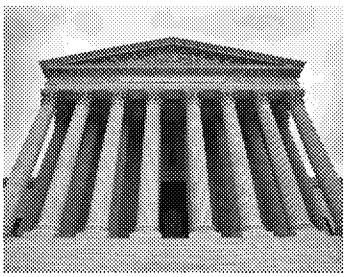


Recently, in a case called *Sokolow, et al v. Palestinian Liberation Organization (PLO)*, the Solicitor General's Office filed a brief in opposition to the Supreme Court cert petition being sought by the petitioners. The petitioners brought a lawsuit against PLO under the 1992 Anti-Terrorism Act, because of its support for terrorist activities that harmed American nationals. The Second Circuit held that the petitioners case should be dismissed because of lack of personal jurisdiction (PJ) over PLO. While the Second Circuit has held that foreign states do not have due process rights, they ruled that PLO does enjoy such rights because it is not a state. Nevertheless, it held that the facts in the record do not support the assertion of either general PJ or specific PJ over the PLO. David Rivkin of BakerHostetler will join us to discuss the case.

[Listen]

Courthouse Steps: *China Agritech v. Resh*

Labor & Employment Law and Litigation Practice Group Teleforum



On March 26, the Supreme Court will hear arguments in *China Agritech, Inc. v. Resh*, a case which will further clarify statutes of limitation in class actions.

In 2011, company shareholders alleged fraudulent business practices and sued China Agritech in two successive putative class actions in 2011 and 2012. The plaintiffs alleged various securities law violations against the company and several individual defendants. Class certification was denied in both cases.

A third putative class action suit was brought by shareholder Michael Resh in 2014, alleging securities law violations arising from the same facts and circumstances as the first two cases. China Agritech moved to dismiss the complaint on the basis that it had been filed after the two year limitations period. Resh and the additional plaintiffs argue that under the precedent set in *American Pipe & Construction v. Utah*, the limitations period had been tolled on their

claims during the pendency of the two prior class actions. The District Court rejected this contention, and the Ninth Circuit reversed. The Supreme Court will now hear arguments on whether the *American Pipe* tolling rule allows a previously unnamed plaintiff to bring a subsequent class action after the applicable limitations period has passed.

Christopher C. Murray of Ogletree Deakins will join us to give his impressions of the oral argument.

[Listen]

Preview: *South Dakota v. Wayfair, Inc.*

Federalism & Separation of Powers Practice Group Teleforum

The Dormant Commerce Clause of the Constitution prohibits states from imposing excessive burdens on interstate commerce without congressional approval. Consistent with this doctrine, in 1967, the Supreme Court held that a state cannot require an out-of-state seller with no physical presence in that state to collect and revoke taxes for goods sold or shipped into the state. The Court affirmed this holding in 1992 and 2015. However, in 2015, Justice Kennedy wrote a concurring opinion asking whether the Court should continue following precedent in light of additional dormant Commerce Clause cases and the recent significant technological and social changes that affect interstate commerce.

In 2016, the South Dakota Legislature passed a law requiring sellers of "tangible personal property" who do not have a physical presence in the state to remit sales tax according to the same procedures as sellers who do have a physical presence. The act limited the obligation to sellers with gross revenue from sales in South Dakota over $100,000, or 200 or more separate transactions, within one year.

The legislation's stated purpose was to help the state maintain revenue in the face of growing internet sales and a decrease in sales tax collections.

Following the passage of the law, South Dakota sued many retailers who failed to comply. The state courts of South Dakota ruled for the retailers, considering themselves "duty bound to follow" the previous Supreme Court rulings. On April, 17, the Justices will weigh in.

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2018 Texas Chapters Conference, Tech Titans, Special Grad Offer, New Podcasts

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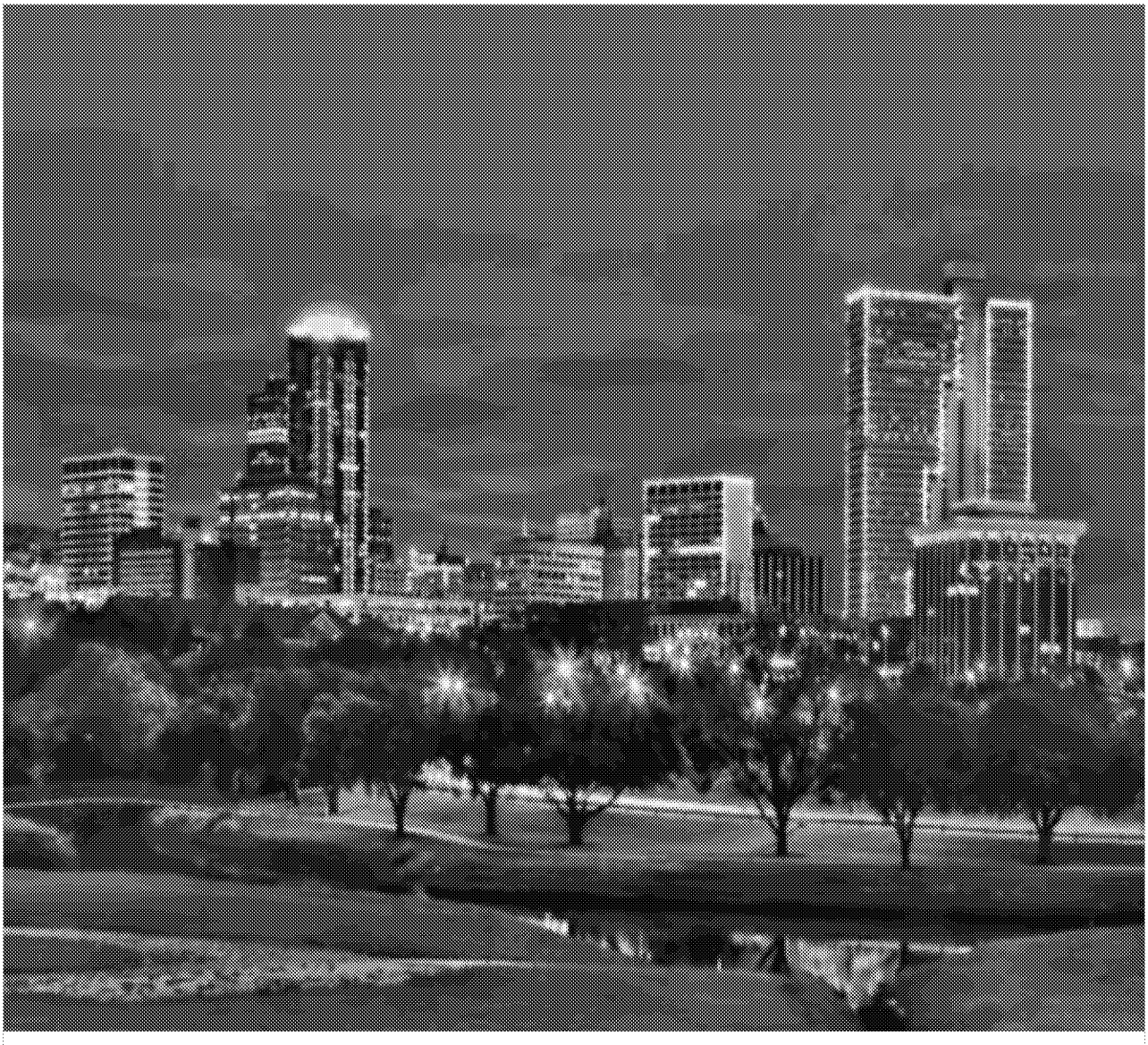
June 15, 2018



2018 Texas Chapters Conference

September 7-8, 2018 | Forth Worth, TX
Registration is open for the 2018 Texas Chapters Conference. The program will include the Inaugural Gregory S. Coleman Memorial Lecture to honor the life, memory, and legacy of Texas' first Solicitor General. Associate Justice Clarence Thomas, Supreme Court of the United States, will serve as this year's Lecturer.
[Register]

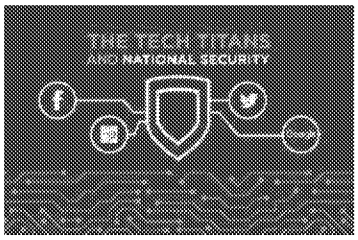
Upcoming Events Across the Country

Our website contains a detailed list of events. [Find an event] #FedSocEvents

Chapter	*Topic & Speakers*	*Date & Time*
Oklahoma City Lawyers Chapter	School Safety, Gun Violence, and Gun Control After Parkland • **John G. Malcolm,** Vice President for the Institute for Constitutional Government, The Heritage Foundation	June 15 12:00 p.m.
San Francisco Lawyers Chapter	Nationwide Injunctions in the Modern Legal Landscape • **Hon. Beth A. Williams**, Assistant Attorney General for the Office of Legal Policy, The Department of Justice	June 18 12:00 p.m.
Capitol Hill Chapter	Campus Free Speech • **Tyler W. Coward**, Legislative Counsel, Foundation for Individual Rights in Education (FIRE) • **Shelby S. Emmett**, Director, Center to Protect Free Speech, American Legislative Exchange Council • **Stanley Kurtz**, Senior Fellow, Ethics and Public Policy Center • **Nicole Neily**, President, Speech First • **Suzanne Nossel**, Chief Executive Officer, PEN America	June 19 12:00 p.m.
Indianapolis Lawyers Chapter	Why We Should Value Campus Free Speech • **Keith E. Whittington**, William Nelson Cromwell Professor of Politics, Department of Politics, Princeton University	June 19 12:00 p.m.
Portland Lawyers Chapter	Reception with Beth Williams • **Beth A. Williams**, U.S. Assistant Attorney General, Office of Legal Policy	June 19 5:30 p.m.

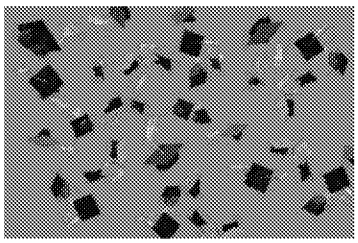
Houston Lawyers Chapter	An Original Document for Every Song in 'Hamilton' • **Charles Eskridge,** Quinn Emanuel	June 20 12:00 p.m.
Austin Lawyers Chapter	Summer Solstice Happy Hour	June 20 5:00 p.m.
Montgomery Lawyers Chapter	Lunch with Justice Parker • **Hon. Tom Parker,** Alabama Supreme Court	June 21 11:30 a.m.
Orange County Lawyers Chapter	*The Lives of the Constitution* with Book Author Joseph Tartakovsky • **Joseph Tartakovsky,** James Wilson Fellow in Constitutional Law, Claremont Institute	June 21 11:30 a.m.
Washington, DC Lawyers Chapters	June 2018 DC Lunch with Prof. Nadine Strossen • **Prof. Nadine Strossen,** John Marshall Harlan II Professor of Law, New York Law School	June 21 12:00 p.m.
Toledo Lawyers Chapter	Interpreting State Constitutions • **Hon. Judith French**, Ohio Supreme Court • **Hon. Jeffrey Sutton**, U.S. Court of Appeals, Sixth Circuit	June 21 12:00 p.m.
DC Young Lawyers Chapter	Dinner with Judge Danny Boggs • **Hon. Danny Julian Boggs**, U.S. Court of Appeals, Sixth Circuit	June 21 6:00 p.m.
Long Island Lawyers Chapter	The Independent Counsel and the U.S. Constitution • **Prof. Saikrishna Prakash,** James Monroe Distinguished Professor of Law and Paul G. Mahoney Research Professor of Law, University of Virginia School of Law	June 21 6:00 p.m.

[EVENT] The Tech Titans and National Security



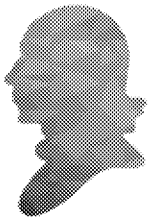
June 28, 2018 | Washington, DC
The leading technology and Internet-based companies play a vital role in cybersecurity and national security. This National Security Symposium will bring together a range of people at the vital center of developing rules and parameters on these issues to debate and discuss how we might succeed in this era. This event is cosponsored by the International & National Security Law Practice Group and the National Security Institute at George Mason University's Antonin Scalia Law School. This event will be live streamed.
[Register]

Special Graduation Offer



The Federalist Society is offering one free year of membership to graduating student members. Other benefits include discounts to chapter events, CLE credit, and valuable networking opportunities. To learn more and claim your free year, visit our website.
[Claim]

The Federalist Society is Hiring



The Federalist Society is currently hiring for positions in the Development and Faculty Divisions. For more information and to apply, visit our website.
[Apply]

Interested in attending one of our many student events? [Find an event]

New Online

[ARTICLE] NGO Demands Mandatory Human Rights Due Diligence

Global Governance Watch

The European Coalition for Corporate Justice has published a report listing the features national lawmakers must include in legislation mandating "comprehensive" corporate human rights due diligence addressing risks of violating "all relevant human rights and environmental standards" throughout global supply chains.
[Read]

FedSoc Blog

Post-Masterpiece Cakeshop SCOTUS: Religious Liberty Cases to Watch

- By William L. Saunders

Is the Special Counsel Lawfully Appointed?

Modern Privacy Advocacy

- By Matthew R. A. Heiman

Can Tribal Immunity Shield Blockbuster Drugs from PTAB Scrutiny?

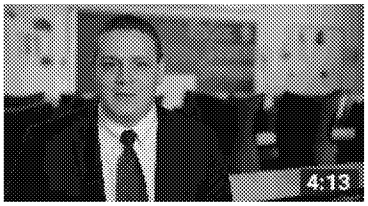
- By Brian Pandya, Wesley Weeks

Net Neutrality - CRA Weekly Roundup
[Read]

[PUBLICATION] Congress as Elephant

Article I Initiative
By Prof. Saikrishna B. Prakash
[Read]

[VIDEO] 2018 Joseph Story Award: Prof. Josh Blackman



National Student Symposium 2018
Featuring Prof. Josh Blackman, Prof. Kurt Lash, Brent Cooper, Prof. Lee Strang, Eugene Meyer, Prof. Randy Barnett, Joel Nolette, Annika Boone, Tiffany Bates, Prof. Michael McConnell, Lee Otis
[Watch]

[VIDEO] Michael McConnell: The Executive Power

National Student Symposium 2018
Featuring Prof. Michael McConnell
[Watch]

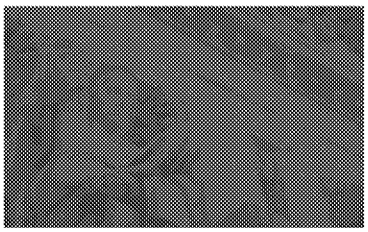
[VIDEO] Founding Principles as Pillars of our Foreign Policy

Federalism & Separation of Powers Practice Group, Article I Initiative
Featuring Hon. Mike Gallagher, Prof. Henry Nau, Prof. Jeremy A. Rabkin, Ilya Shapiro, Nathan Kaczmarek (Moderator)
[Watch]

[VIDEO] The Founding Fathers as Economic Innovators

Regulatory Transparency Project
Featuring Prof. Adam Mossoff
[Watch]

[PODCAST] Murphy v. National Collegiate Athletic Association - Post-Decision SCOTUScast



SCOTUScast
Featuring Elbert Lin
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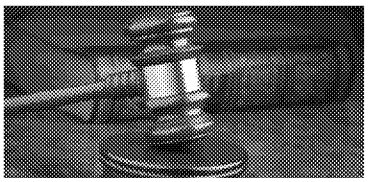
[PODCAST] Courthouse Steps: Collins v. Virginia



Criminal Law & Procedure Practice Group
Featuring Greg Brower
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[PODCAST] The AFFH Rider

Civil Rights Practice Group
Featuring Stanley Kurtz
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In the Pipeline

MORNING ENERGY NEWS | 6.15.2018

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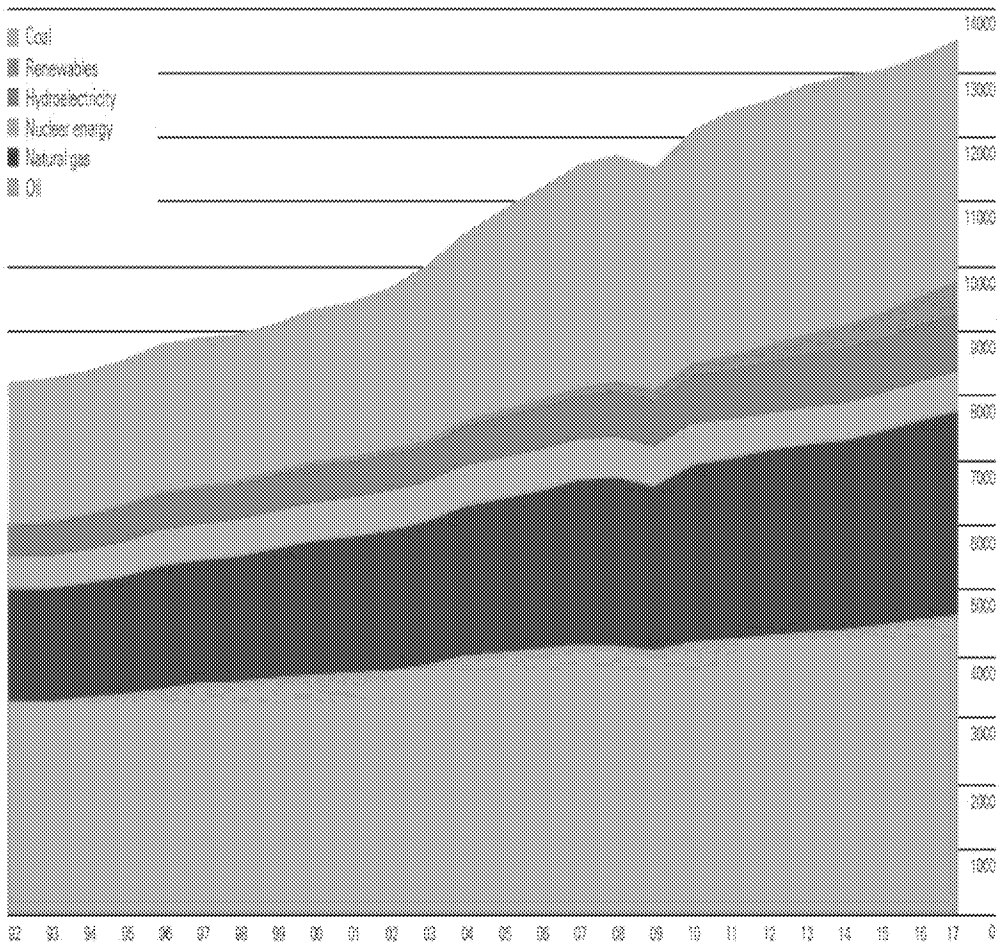
Reality Bites

Forbes (6/14/18) reports: "First, the report shows that the world achieved a new oil production record of 92.6 million barrels per day (BPD), which is the 8th straight year global oil production has increased. The United States was the world's top oil producer in 2017, exceeding 13 million BPD* for the first time ever. Saudi Arabia was second at 12.0 million BPD, while Russia came in at 11.3 million BPD... Global natural gas production jumped 3.0% to a new record of 355 billion cubic feet per day. The U.S. led all countries in both production and consumption of natural gas... Global coal consumption increased by 1.0%, but remains 3.5% below the peak reached in 2013. Coal consumption declined in the U.S. and European Union, but crept 0.5% higher in China. China remains the world's top coal market, with the country consuming 50.7% of the world's coal in 2017."

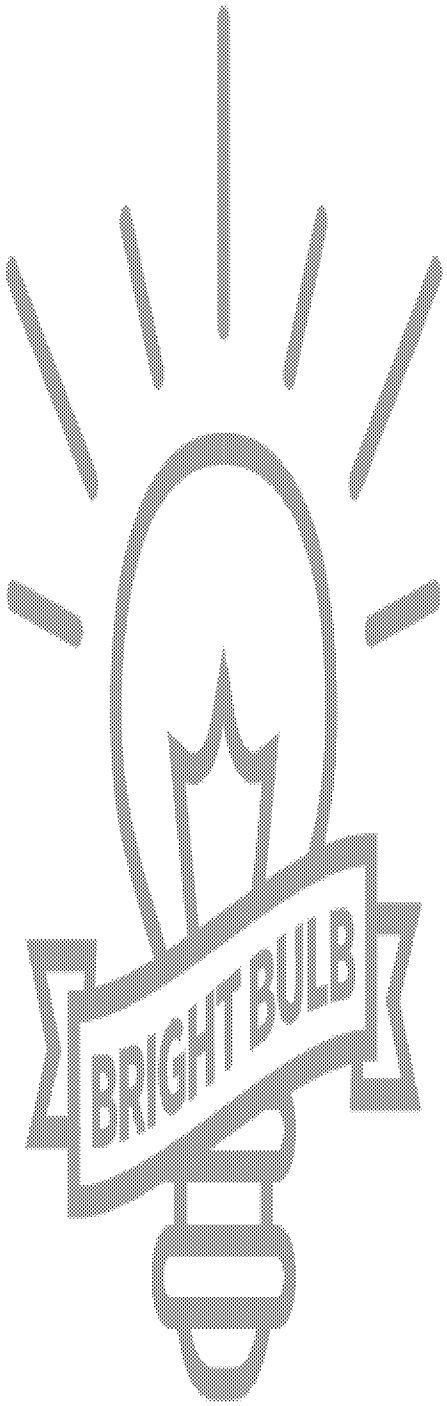
World consumption

Million tonnes oil equivalent

BP Statistical Review of World Energy: June 2018



World primary energy consumption grew by 2.2% in 2017, up from 1.2% in 2016 and the highest since 2010. Growth was below average in Asia Pacific, the Middle East and S. & Cent. America but above average in other regions. All fuels except coal and hydroelectricity grew at above-average rates. Natural gas provided the largest increment to energy consumption at 83 million tonnes of oil equivalent (mtoe), followed by renewable power (69 mtoe) and oil (65 mtoe).



"What these lawsuits are really about is our way of life. Suing dozens of American oil, gas, and other companies cannot change the fact that we all rely on energy products every day to heat our homes, fuel our cars, and turn on our lights. One of the organizers of these lawsuits even admitted that publicly vilifying energy production was a key objective here."

– Phil Goldberg, RealClearEnergy

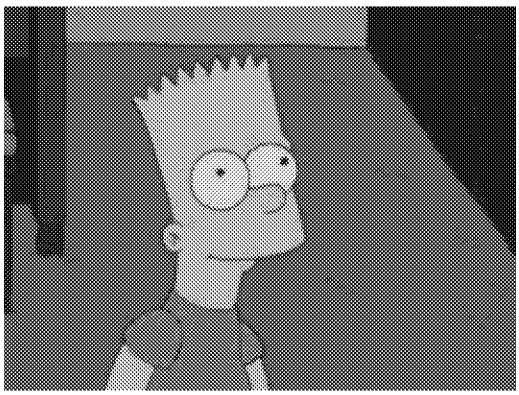
Here's your real Russian scandal.

Washington Examiner (6/15/18) reports: "So far, no hard evidence has emerged that says Donald Trump knowingly colluded with Russia during the 2016 campaign.

But there is plenty of evidence in the form of a tangible money trail that links Vladimir Putin's Russian government with U.S. environmental groups. In fact, the source of this funding has been subject of two congressional committee inquiries...Smith's report describes the Russian scheme to use nonprofit entities to influence and sway U.S. public policy and public opinion against fracking. The evidence in the report shows that Russia has been using U.S. environmental groups to spread what Smith aptly describes as "propaganda" to undermine America's natural gas revolution."

The blame game: Germany says it's missing its 2020 climate goals because of a roaring economy. Nothing to do with shutting down all those nukes.

Quartz (6/13/18) reports: "Germany, often held up as an example of how to go green, has said it's not going to hit its 2020 emissions-reduction goals. The government is putting the blame on its blistering economic growth and increase in vehicles... Germany, as part of its ambitious plan for a transition to clean energy ("Energiewende") has invested heavily in renewables. And it has also been closing nuclear power plants at a clip since 2011, leaving it still pretty reliant on coal and lignite plants. In 2015, more than 40% of Germany's electricity production came from those sources—making it the biggest greenhouse gas producer in the EU. Last week, Berlin appointed a commission to try and speed up the coal exit."



Jet fuel for the world.

EIA (6/13/18) reports: "The United States exported 186,000 barrels per day (b/d) of jet fuel in 2017, the eleventh consecutive year of increasing gross jet fuel exports. Almost two-thirds (62%) of U.S. jet fuel exports went to countries in Latin America and the Caribbean, especially Mexico. Relatively high domestic production and a growing international aviation industry have established the United States as a net exporter of jet fuel for the seventh straight year."

The wonders of socialism.

Reuters (6/13/18) reports: "PDVSA has been falling short on fuel exports in recent years due to a lack of lighter crudes to refine, a shortage of spare parts, poor maintenance, and management upheaval at its domestic refining network. PDVSA also lost access in May to inventories produced in Curacao, where it operates the Isla refinery. Declining revenue resulting from falling oil production and exports have driven Venezuela into a severe economic recession, and led

to a loss of skilled workers, and widespread food and medicine shortages. Some energy experts say further production declines could contribute to a global crude shortfall."

How you like me now, OPEC?

New York Times ((6/13/18) reports: "It is unusual for the United States, Saudi Arabia and Russia to see eye-to-eye, much less try to achieve common energy policy goals, even indirectly. But that is what seems to be happening, and it is taking the edge off the yearlong rise in oil and gasoline prices. Even if those

countries have their own reasons for welcoming the surge in production, it is also reducing the influence of the Organization of the Petroleum Exporting Countries, which will meet in Vienna next week to discuss production cuts put in place in early 2017. The cheerleader, if not the ringmaster, in this effort is President Trump, who took to Twitter on Wednesday to criticize OPEC for high crude prices. "Oil prices are too high, OPEC is at it again," he wrote in his second such statement since April. "Not good."

If you oppose a carbon tax, please contact us and take a stand.

Tom Pyle, American Energy Alliance

Myron Ebell, Americans for Competitive Enterprise, Competitive Enterprise Institute
Phil Kerpen, American Commitment
William O'Keefe, George C. Marshall Institute
Andrew Quinlan, Center for Freedom and Prosperity
Tim Phillips, Americans for Prosperity
Joe Bast, Heartland Institute
David Ridenour, National Center for Public Policy Research
Michael Needham, Heritage Action for America
Grover Norquist, Americans for Tax Reform
Sabrina Schaeffer, Independent Women's Forum
George Landrith, Frontiers of Freedom
Thomas A. Schatz, Citizens Against Government Waste
Richard Manning, Americans for Limited Government
Adam Brandon, FreedomWorks
Rich Collins, Positive Growth Alliance
Craig Richardson, E&E Legal
The Honorable George Allen, American Energy Freedom Center
Dick Patten, American Business Defense Council
Benjamin Zycher, American Enterprise Institute
Amy Oliver Cooke, Independence Institute
Jack Ekstrom, PolicyWorks America

Energy Markets

WTI Crude Oil: ↓ $66.79

Natural Gas: ↑ $3.00

Gasoline: $2.90

Diesel: $3.19

Heating Oil: ↓ $214.56

Brent Crude Oil: ↓ $75.58

US Rig Count: ↓ 1121

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Subject: Teleforum Announced: Courthouse Steps Decision: Minnesota Voters Alliance v. Mansky

The Federalist Society

June 14, 2018

Teleforum Call Announced

Dial 888-752-3232 to Participate

Courthouse Steps Decision: *Minnesota Voters Alliance v. Mansky*

Free Speech & Election Law Practice Group Teleforum

Today, Thursday, June 14, 2018 | *3:00 p.m. ET*

Elizabeth Slattery
Legal Fellow
Appellate Advocacy Program Manager
Meese Center for Legal and Judicial Studies
Institute for Constitutional Government
The Heritage Foundation

Most states have laws that prohibit electioneering within polling places on election day, and the Supreme Court has upheld buffer zones that extend this prohibition to areas immediately surrounding polling places. But Minnesota law went beyond electioneering and prohibits wearing "a political badge, political button, or other political insignia . . . at or about the polling place[.]" This included Gadsden flag t-shirts, buttons demanding to be asked for voter identification, or apparel referencing an organization such as the AFL-CIO. In *Minnesota Voters Alliance v. Mansky*, the Court ruled 7-2 that the law is unconstitutional under the First Amendment.

Dial 888-752-3232 at 3:00 p.m. ET to Participate

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on behalf of Dolley Madison [dolley@fedsoc.org]
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To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Starting Now: Beneficial Ownership

The Federalist Society

April 6, 2018

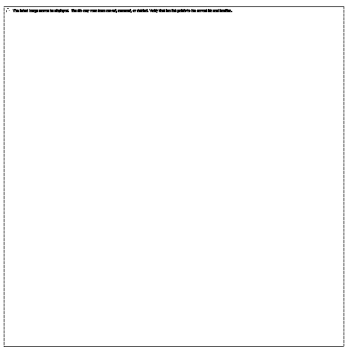
Our Call is Beginning NOW

Dial 888-752-3232 to Participate

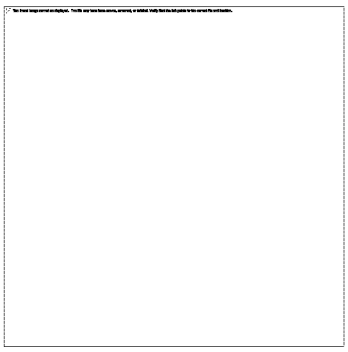
Beneficial Ownership

Litigation and Corporations & Antitrust Practice Group Teleforum

Friday, April 6, 2018 | 12:00 noon ET



David R. Burton
Senior Fellow in Economic Policy
Roe Institute for Economic Policy Studies
Institute for Economic Freedom and Opportunity
The Heritage Foundation



Clay R. Fuller
AEI Jeane Kirkpatrick Fellow
American Enterprise Institute

Hearings have been held recently in both the House of Representatives and the U.S. Senate on so-called "beneficial ownership" legislation to fight terrorism and money laundering by compelling both newly formed and already existing corporations and limited liability companies to disclose to the government every individual who "directly or indirectly" has "a substantial interest in or receives substantial economic benefits from" or exercises "substantial control" over the entity. The legislation under consideration in the House of Representatives is Section 9 of the Counter Terrorism and Illicit Finance Act, and the Senate legislation is S. 1454. The legislation requires people responsible for new and existing corporations and LLCs to report the name, address and an unexpired driver's license or passport number to the government for every individual who meets this standard, as it may be ultimately defined by regulators. These bills require updates within 60 days of the occurrence of any change in the list of people meeting one of these definitions, or any of the identifying information previously disclosed about them. The legislation includes criminal penalties. These legislative proposals have engendered considerable debate on Capitol Hill for many years. Clay Fuller of AEI and David Burton of Heritage will join us to discuss the new legislation and what it would mean for American businesses.

Dial 888-752-3232 to Participate

Speaker Biographies

David R. Burton

David R. Burton focuses on tax matters, securities law, entrepreneurship, financial privacy and regulatory and administrative law issues as The Heritage Foundation's senior fellow in economic policy.

Mr. Burton was general counsel at the National Small Business Association for two years before joining Heritage's Roe Institute for Economic Policy Studies in 2013. He previously was chief financial officer and general counsel of the start-up Alliance for Retirement Prosperity, a conservative alternative to AARP.

For 15 years, Mr. Burton was a partner in the Argus Group, a Virginia-based law, public policy and government relations firm. His career in financial and tax matters also includes the posts of vice president for finance and general counsel of New England Machinery, a multinational manufacturer of packaging equipment and testing instruments, and manager of the U.S. Chamber of Commerce's Tax Policy Center.

Mr. Burton received a juris doctor degree from the University Of Maryland School Of Law. He also holds a Bachelor of Arts degree in Economics from the University of Chicago.

Born at the Patuxent River Naval Air Station in St. Mary's County, Md., Mr. Burton grew up in Baltimore. He and his wife, Nancy, currently reside in Mason Neck, Va.

Clay R. Fuller

Clay R. Fuller is a Jeane Kirkpatrick fellow at the American Enterprise Institute, where he focuses on authoritarian survival, corruption, and the means through which dictators, terrorists, and criminals use free markets to restrict freedom, sow discord, and legitimize their actions. He also collects data on the use of special economic zones and sovereign wealth funds in nondemocratic countries.

Previously, Dr. Fuller taught international relations, American government, and modern dictatorships, among other courses, at the University of South Carolina, Western Carolina University, Midlands Technical College, and Texas State University.

Dr. Fuller has been published in peer-review journals. He is currently working on a book titled "The Economic Foundations of Authoritarian Rule." His forthcoming studies include "The Who and the How of Authoritarian Rule" and "The Rise of Authoritarian Liberalism."

Dr. Fuller has four degrees in political science: a Ph.D. and an M.A. from the University of South Carolina, another M.A. from Texas State University, and a B.A. from West Virginia State University

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Clint

Was great to touch base with you. Personal Matters / Ex. 6

Personal Matters / Ex. 6

Kathleen

Texas Public Policy Foundation

EPA's Pretense of Science: *Regulating Phantom Risks*

by Kathleen Hartnett White

May 2012

Texas Public Policy Foundation

May 2012

Texas Public Policy Foundation

by Kathleen Hartnett White

Distinguished Senior Fellow-in-Residence

Director, Armstrong Center for Energy & the Environment

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The EPA's Pretense of Science: Regulating Phantom Risks

by Kathleen Hartnett White

Preface

I write this paper on the U.S. Environmental Protection Agency's (EPA) misuse of science from my six-year former experience as a final regulatory decision-maker for the Texas Commission on Environmental Quality (TCEQ), the world's second largest environmental regulatory agency after the EPA itself. I was a commissioner and chairman, of TCEQ from 2001-2007. My responsibility for making final decisions on regulations, permits, and enforcement actions necessarily involved my judgments about the rigor, accuracy, and relative uncertainties in diverse scientific studies, statistics, modeling protocols, and technical analyses. I viewed this "science" as a critical tool to inform—but not to dictate—what were ultimately legal and policy decisions.

Various members of the scientific community claim that non-scientists, like me, cannot challenge the credibility of the EPA's use of science. This view maintains that only credentialed scientists can critique the work of other credentialed scientists. If that is the case, so much the worse for representative democracy.[1] Government by popularly elected representatives on the one hand and government by federal administrators swearing by the authority of science, on the other hand, are contradictory notions. I would call the latter, moreover, an acutely dangerous notion. Regrettably, in the modern United States these two incompatible policy-making models clash often, and with dire results. Elected officials trying to carry out their public duties—e.g. maximizing access to clean, affordable energy—meet stubborn opposition from federal mandarins brandishing their scientific credentials. The magnitude of the EPA's current regulatory agenda has elevated the importance of these issues.

In my efforts to understand the science on which the EPA grounds its regulatory decision, I am indebted to two notable scientists who have patiently educated me over many years: Dr. Michael Honeycutt, chief toxicologist at TCEQ, and David Schanbacher, P.E., former chief engineer at TCEQ, now director of natural resources for the Texas Comptroller of Public Accounts. I am also grateful for two recent papers which astutely unwind the tangled scientific web now supporting the EPA's historically "unprecedented regulatory spree."[2] My analysis draws heavily on these papers written, respectively, by Dr. Anne Smith of National Economic Research Associates and Dr. Tony Cox, president of Cox Associates.

- Anne Smith, Ph.D., "An Evaluation of the PM 2.5 Health Benefits Estimates for Regulatory Impact Analysis of Recent Air Regulations," NERA (Dec. 2011).

- Louis Anthony (Tony) Cox, Jr., "Reassessing the Human Health Benefits from Clean Air," Risk Analysis (Nov. 2011).

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Introduction

As my late father frequently pointed out (and in a poignant sense proved), "no one gets out of this alive." Human life is certain to end and is fraught with dangers. Yet life in the 21st century United States is far safer than ever before. Medical science and disease prevention have dramatically reduced, if not eliminated, many disabling and fatal diseases. Life expectancy steadily increases. In highly developed countries like the United States, the most dangerous environmental risks to human life from contaminated water and air have been virtually eliminated.

The U.S. Environmental Protection Agency (EPA), nevertheless, would have Americans believe that hundreds of thousands will die unless its new and unparalleled regulatory agenda is enacted. The EPA undertakes to "protect" us through rules costing many billions of dollars and with cumulative impacts jeopardizing the nation's electric power supply and millions of jobs. The agency confidently justifies these costs on the value of "preventing deaths" from exposures to a single pollutant rarely considered by physicians to be a killer! The pollutant is known as fine Particulate Matter 2.5 (PM 2.5). *See Sidebar: What is Particulate Matter?*

After dramatic improvement in air quality and ever-stricter federal air quality standards now approaching natural background levels *(see Figure 1)*, the EPA, in order to justify more stringent regulation, recently devised a method to create a vast reservoir of new health risks. Under the cloak of selective, highly uncertain science driven by implausible assumptions, the EPA now declares that additional regulations are necessary to save thousands of lives. The EPA Administrator Lisa Jackson's inflammatory claims regularly deceive the public. On "Real Time with Bill Maher," she grimly warned that "We are actually at the point in many areas of the country … the best advice is don't go outside. Don't breathe the air. It might kill you."[3] In similarly hyperbolic vein, she told a congressional committee: "If we could reduce particulate matter [pollution] to levels that are healthy, it would have identical impacts to finding a cure for cancer."[4] This astounding assertion by the head of the EPA demands meaningful explanation. In recent years, cancer has caused the deaths of approximately 600,000 people per year.

This paper aims to demonstrate how several highly questionable assumptions have enabled the EPA to assign health risks at extremely low concentrations of PM 2.5—levels now well

Sidebar: What is Particulate Matter (PM)?

Particulate matter (PM) is a fancy word for natural dust and for the microscopic particles released from man-made activities, especially combustion. PM is everywhere present on the crustal planet earth from natural and man-made sources. To the EPA, particulate matter (PM) is one of the six criteria pollutants regulated under the federal Clean Air Act through National Ambient Air Quality Standards (NAAQS) established by the EPA at a level adequate to protect public health.

PM includes both small solid particles and liquid droplets in the air we breathe. The fine particles in question are minute and measured in microns (micrometers). The width of an average human hair is 70 microns. "Because particles are the byproduct of everything we do in an industrial society as well as natural processes like wind, erosion, forest and brush fires, they are everywhere."[5] Industrial processes like rock crushing, common domestic activities like cooking, sewing, grilling, wood-burning, combustion of transportation fuels, and farming continually generate PM. Living on a planet composted of dirt, stone, and plants makes PM a ubiquitous component of human life.

The EPA does not distinguish between PM from natural sources such as dirt roads and tilling croplands and PM from urban and industrial sources. Urban PM is likely to be enriched with pollutants with a chemical content potentially more hazardous than natural dust. In spite of many scientific studies stressing this distinction, the EPA still assumes all PM carries the same health risks and regulates accordingly.

The EPA has established a NAAQS for two different sizes of PM: a standard for coarse PM measuring between 2.5 and 10 microns and a standard for fine PM 2.5 microns and lower. The current 24-hour standard for coarse PM 10 is 150 micrograms per cubic meter (ug/m3). The 24-hour standard for PM 2.5 is 35 ug/m3 and the annual standard for PM 2.5 is 15 ug/m3. Although many health-effects studies do not find adverse effects at current levels of PM, the EPA concludes the fine particles (PM 2.5) still pose health risk by irritating or damaging the minute air sacs in the lungs called alveoli. Many toxicological studies, however, find that the natural cleaning system in the lungs removes the minute solids.

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Figure 1: Air Quality Improvement 1980-2010

	Ambient 1980-2008	Ambient 1980-2010	Emissions 1980-2008	Emissions 1980-2010
Carbon Monoxide (CO)	-79%	-82%	-58%	-71%
Ozone (O3)	-25%	-28%	-49%	NCD
Lead (Pb)	-92%	-90%	-96%	-97%
Nitrogen Dioxide (NO2)	-46%	-52%	-40%	-52%
Particulates (PM10)*	-31%	-38%	-46%	-83%
Fine Particulates (PM2.5)**	-21%	-27%	-36%	-55%
Sulfur Dioxide (SO2)	-71%	-76%	-56%	-69%

NCD - No Current Data

*1990-2010

**2000-2010

Source: Environmental Protection Agency, "Air Quality Trends," Jan. 2012.

below the already precautionary federal standard for PM 2.5. These key assumptions include: 1) Ambient PM 2.5 causes premature death; 2) There is no threshold concentration of ambient PM 2.5 below which risk of premature death ceases; 3) Aggregation of statistical risks is a meaningful surrogate for a human life; and 4) Coincidental reduction of PM 2.5 offers legitimate justification for regulatory initiatives targeting other pollutants.

The EPA is relying almost exclusively on coincidental reduction of PM 2.5 to justify the many new regulations collectively known as the EPA "train-wreck" rules.[6] For example, 99.996 percent of the health benefits supporting the mercury rule derive from coincidental reduction of PM 2.5. Direct reduction of mercury accounts for only 0.004 percent of the rule's benefits. Without using the inadvertent reduction of PM 2.5 as a hoist, the costs of these new regulations would far surpass their direct benefits. This practice shields the EPA's rules with few measurable benefits from scrutiny. Further, it subverts the purpose of cost-benefit analysis.

Benefits and Costs of the Clean Air Act from 1990-2020: The Benefits Study

Most of the country already achieves the health-based National Ambient Air Quality Standard (NAAQS) for PM 2.5. Under the federal Clean Air Act, the NAAQS for PM 2.5 and the five other "criteria pollutants" must be set at a level requisite to protect human health with an extra margin of safety *and regardless of cost*. Thus, the NAAQS are extremely conservative, precautionary standards. "It can be argued that the 1970 Clean Air Act effectively operationalized the absolutist version of the precautionary principle."[7] Although variously defined, the precautionary principle generally means that with risk of grave, however improbable, harm, and regardless of uncertainty or cost, regulatory intervention is justified.

Since 2009, the EPA has applied a far more precautionary approach than is articulated in the CAA for the health-protective NAAQS. In risk assessments and analyses of the cost and benefits of regulation, the agency no longer regards the ambient pollutant levels set by the NAAQS to be fully protective. The EPA is now attributing risk of premature mortality at PM concentrations approaching and below natural (and thus unpreventable) background levels. Similarly, the EPA is now justifying almost all of its many new air quality regulations on the basis of coincidental reduction of PM 2.5 in rules not intended to address PM 2.5.

This EPA is obsessed with PM 2.5—a criteria pollutant many scientists and regulators believe has already been reduced to healthy levels. To the EPA, however, existing levels of PM 2.5 pose risks to death on a par with cancer! A closer look at an EPA study issued in 2011 reveals the questionable methodology and assumptions behind the EPA's pre-occupation with

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ambient PM 2.5. This study, "Benefits and Costs of the Clean Air Act: Second Prospective Study, 1990-2020," projects the benefits and the costs of the 1990 amendments to the CAA.[8]

The executive summary reveals the EPA's new methodology. Here the EPA attributes 85 percent of the health benefits projected over the study period (1990-2020) to reduction of ambient levels of PM 2.5. This "Benefits" study finds that CAA regulation will "save" 230,000 lives in 2020.[9] The EPA monetizes the value of those saved lives at nearly $2 trillion but estimates the direct compliance costs at a comparatively paltry $65 billion. The EPA implies that the public pays only $1 dollar for every $30 dollars in health benefits as a result of additional reduction of ambient PM 2.5. Over 90 percent of the $2 trillion derives from alleged prevention of "premature mortality"—roughly equivalent to shortened life expectancy.

The EPA further imputes the equivalent of 100 percent certainty to the nearly $2 trillion valuation of the benefits supposed to result from preventing over 230,000 early deaths. "The wide margins by which benefits exceed costs combined with *extensive uncertainty analysis* suggest it is very unlikely this result would be reversed using any reasonable alternative assumptions of methods."[10] (Emphasis added) It's a great return on investment—$30 for every $1 put in. Moreover, it's a sure thing.

If the EPA's claims about saving lives and gaining trillions of dollars in benefits were factually true, the case for its aggressive regulatory agenda would be compelling. How can society worry about higher electric rates or losing American jobs and businesses to foreign shores when thousands of human lives are at stake? The numbers, however, are so high—such an inflation from previous analyses of PM 2.5 impacts—and so lacking in credible explanation from the EPA that they exceed the bounds of credibility.

Peeling back the layers of assumption on which the EPA's massive benefits depend, one finds that the EPA's claims are misleading at best, deceptive at worst. What the Benefits study calls an "extensive uncertainty analysis" amounts to an assumption in a cherry-picked model that precludes any other conclusion than a 100 percent probability.[11] Dr. Tony Cox paraphrases the EPA's claim stating: "Assuming that I am right, it is extremely unlikely that any reasonable combination of alternative assumptions would show that I am wrong."[12] This is what in logic is called begging the question.

Sidebar: Cost-Benefit Analysis

Cost-benefit analysis, a basic component of Regulatory Impact Analysis (RIA), has long been used to assess the relative advantages or benefits of proposed regulation in comparison to the relative burdens and monetary costs of complying with the regulation. Under an Executive Order issued by President Ronald Reagan in 1981, federal agencies must submit to the White House Office of Management and Budget (OMB) a cost-benefit analysis for all proposed "economically significant" rules. A regulation carrying annual compliance costs of $100 million or more is subject to this requirement.

If objectively and comprehensively conducted, cost-benefit analysis should provide key information to regulatory decision makers, elected policymakers, and the public. And while a full RIA should contain a variety of data and analyses, the cost-benefit analysis is a key conclusion. OMB's current guidance highlights the essential role of cost-benefit analysis in a democracy where regulatory coercion should be the exception and not the rule.

"Regulatory analysis is a tool regulatory agencies use to anticipate and evaluate the likely consequences of rules. It provides a formal way of organizing the evidence on the key effects, good and bad, of the various alternatives that should be considered in developing regulations. The motivation is to: 1) learn if the benefits of an action are likely to justify the costs, or 2) discover which of various possible alternatives would be the most cost-effective."[13]

Under past and present administrations, the EPA has monetized both sides of the cost-benefit equation. The costs are an estimate of the direct costs of compliance incurred by the regulated entity. The benefits typically are an estimate of a dollar-value of the avoidance of morbidity (illness) or premature mortality (shortened life span). The EPA has used diverse methodologies to monetize "work days not lost" or "living longer" but the numbers have become so speculative and inflated as to have no meaningful predictive value.

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Assumption I: PM 2.5 Causes Premature Mortality, a/k/a Early Death

The main premise behind the EPA's promise of massive health benefits from additional regulation is that PM 2.5 causes premature mortality or reduced lifespan. But the selective ecological epidemiological studies upon which the EPA relies to make this claim are incapable of establishing a causal link between death and ambient concentrations of PM 2.5. The two studies on which the EPA relies indicate statistical associations between mortality rates and PM 2.5 concentrations in specific cities.[14] These chronic exposure studies exclude accidental death and somewhat "adjust" for other factors such as smoking or obesity but otherwise attribute all non-accidental deaths to PM 2.5.

The EPA then intricately manipulates the statistical associations through models. The studies can show only an association or a concurrence between slightly elevated mortality rates and PM 2.5 levels. They cannot establish causation. As an example, the statistical correlation between higher rates of swimming and heart attacks in summer months in no way "proves" that swimming causes heart attacks. The correlation between higher incidence of hypothermia and purchase of heavy coats during winter months does not mean heavy coats cause hypothermia.

The EPA's "Benefits Study" admits that the question of causation is a *crucial uncertainty* that could lead to "potentially major" overestimation of benefits. "The analysis *assumes a causal relationship between PM exposure and premature mortality* based on strong epidemiological evidence of a PM/mortality association. However, epidemiological evidence alone cannot establish this causal link."[15] (Emphasis added.) After acknowledging this uncertainty, the EPA proceeds to the assumption that PM 2.5 *causes* early death, an assumption made without analyzing the statistical correlations within a causal framework.

Such analytical frameworks exist. Nine analytical criteria, known as the Bradford Hill causal criteria, are widely used by public health scientists to assess whether an observed correlation is or is not likely to be a factual cause.[16] Factors such as biological plausibility and experimental evidence are critical in weighing the health risks from air pollutants. The EPA, on the other hand, imputes complete causal certainty for little reason offered other than the assumption of causation is consistent with current practice. The EPA's cherry-picked, unvalidated model for the "uncertainty analysis" assigns a probability of 100 percent to the causal connection between PM 2.5 and premature mortality. Such complete certainty is unwarranted by available data and knowledge, as discussed next.[17]

The EPA's attribution of the equivalent of 100 percent certainty to the assumption that PM 2.5 causes premature mortality also ignores a huge body of credible scientific studies and unanswered questions about which the EPA is certainly aware. The National Academy of Sciences, toxicologists, statisticians and medical doctors have long challenged the findings of epidemiological studies which claim strong evidence of correlations where no causality in fact exists.[18] As Dr. Michael Honeycutt, the chief toxicologist for TCEQ, pointed out in congressional testimony, "Ecological epidemiological studies are not scientifically rigorous to draw conclusions about the cause of health effects identified in the studies … and are not suitable for policy decisions."[19]

Many confounding variables left unaddressed in the EPA's selected studies weaken the credibility of even the statistical association, much less the assumption of a causal link between PM 2.5 and premature mortality. Typical confounders include the presence of multiple pollutants co-mingled with PM 2.5 in the ambient air, the diverse composition of PM 2.5 (from natural dust to chemically enriched, and perhaps more hazardous, fine particles) across locations, and the question of whether earlier exposures to PM 2.5 at levels far higher than current levels account for cumulative mortality risks later in life. The current ambient levels of PM 2.5 are far lower than the earlier periods to which subjects of the studies were exposed.

The question of exposure is a major confounder in many of the EPA's risk assessments. Yet the EPA typically assumes an unrealistic worst-case scenario of maximum exposure 24 hours a day. The EPA's assumption that all study subjects are equally exposed to the monitored levels of outdoor PM 2.5 is simply not a representative measure of average, actual exposure. Research shows that PM 2.5 concentrations indoors are much higher than outdoor levels. Yet cleaning the closet, vacuuming, cooking or cruising through a department store can hardly be regarded mortal risks.[20]

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The EPA's estimate of the benefits from reducing PM 2.5-caused morbidity (sickness) also ignores key research data to the contrary. The EPA's "Benefits" study projects 2.4 million fewer cases of aggravated asthma in 2020. Medical scientists, however, recognize that respiratory infections, mildew, mites, and pet dander more directly exacerbate asthma than ambient air. And incidence of asthma has increased over the past several decades while concentrations of all CAA-regulated pollutants have declined by over 50 percent.[21]

The EPA also disregards studies that show no or even negative correlations. Some studies indicate reduced mortality risks at higher levels of PM 2.5. A recent analysis of mortality risks from PM 2.5 in 27 U.S. communities found a decrease in mortality rates at increased levels of PM 2.5 for one-third of U.S. cities, including Dallas, Houston, Las Vegas and Riverside, California.[22]

Most importantly, the EPA ignores toxicological and clinical studies, which are alone capable of evaluating whether, and to what extent, outdoor concentrations of PM 2.5 may causally impact cardiopulmonary function. Most toxicologists studies contradict the EPA's PM 2.5 risk assessments. "Toxicological data on typical forms of pollution-derived PM strongly suggest that current ambient concentrations in the U.S. are too small to cause significant disease or death. … The expectation that lives will be saved by reducing ambient PM 2.5 in the U.S. is not supported by the weight of evidence, although other bases for regulating PM may be justifiable."[23]

Assumption II: Going to Zero: No Pollutant Threshold Below Which Air is Healthy

In 2009, the EPA made a methodological change with huge ramifications. The agency now calculates mortality risks from PM 2.5 below the health protective level of the NAAQS (presently set at an annual 15 ug/m3). It also calculates them below the lowest measured ambient level (LML) in the original studies and even below natural background levels approaching zero. Remarkably, the EPA now assumes that there is no level of PM 2.5 below which risks to premature death cease. Statisticians call this a "no threshold linear regression to zero analytic model." In laymen's terms, no risk is too low.

Prior to 2009, the EPA did not estimate risks below the lowest ambient level measured in the epidemiological studies. If the PM level in a given location was already below the LML (typically 10 ug/m3), the agency did not assume additional reductions in PM 2.5 would generate additional health benefits. "However, starting in 2009, the EPA decided that it would calculate risks to the lowest level projected by its air quality models, even though no observed or empirical evidence exists … in that low concentration zone."[24]

The statistical associations between premature mortality and PM 2.5 identified in the epidemiological studies cease below the lowest measured level in the study. But the EPA now imputes, by extrapolation, the same risks (and at the same rate) for PM 2.5 levels for which no statistical evidence exists. "Extrapolation is the use of quantitative relationships outside the range of evidence on which it was based."[25]

The EPA's adoption of this no-threshold approach to assessing risk increased by almost four-fold. The EPA's estimate of total U.S. deaths attributable to PM 2.5 pollution—from 88,000 to 320,000! This approach means, according to the EPA at least, that over two-thirds of the public's health risk from exposure to PM 2.5 comes from ambient levels not only far below the protective national standards known as the NAAQS but even below the lowest modeled levels in the relevant studies.[26]

In short, the EPA's incredible finding is that mortal risks increase in proportion to the extent that a location's ambient concentration of PM 2.5 exceeds natural background levels—now estimated by the EPA at the extremely low figure of 1 ug/m3. "This created a major change in the level of national mortality estimated to be due to PM 2.5 because the majority of the U.S. population resides in locations where the ambient PM 2.5 concentrations are below 10ug/m3."[27] *(See Figure 2).*

Despite critical questions from members of Congress, senior EPA leadership recently defended adoption of the no-threshold approach. Says Gina McCarthy, assistant administrator of the EPA: "Studies demonstrate an association between premature mortality and fine particle pollution at the lowest levels measured in the relevant studies, levels that are significantly below the NAAQS for fine particles. These studies have not observed a level below which premature

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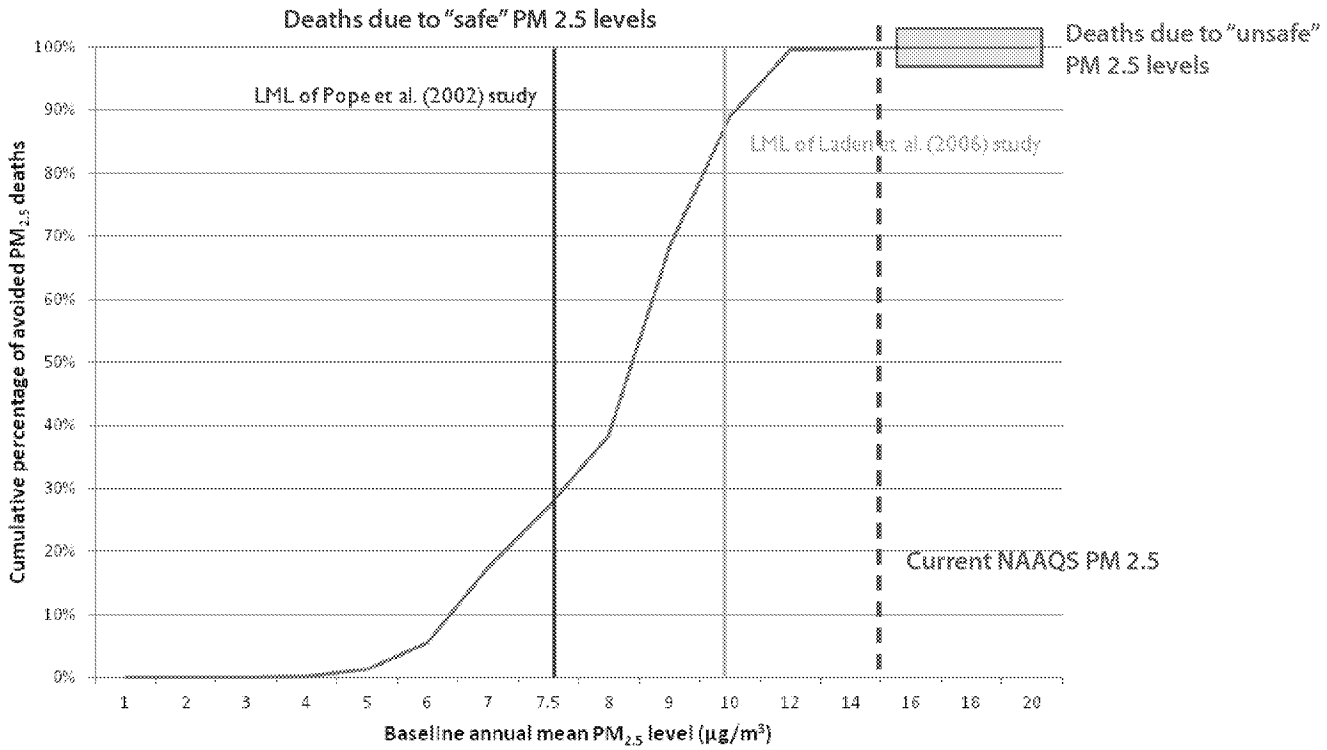
Figure 2: Risk Attributed to Ambient PM 2.5



Of the total PM-related deaths avoided:

73% occur among population exposed to PM levels at or above the LML of the Pope et al. study.

11% occur among population exposed to PM levels at or above the LML of the Laden et al. study.

Source: Table 5-15, EPA's RIA in final Utility MACT (mercury) Rule.

mortality effects do not occur. The best scientific evidence … is that there is no threshold level of fine particle pollution below which health risk reductions are not achieved by reduced exposure." This is another way of saying: No risk is too low, improbable, or uncertain that it is not worth regulating.[28]

The EPA claims that the two studies in question show no evidence of a threshold, but many studies ignored by the EPA do show a threshold. The agency's Benefit Study admits that the "no-threshold" assumption is a "key uncertainty" but as usual assigns a "high" confidence to the model that incorporates this assumption. The single study that the EPA cites to support this questionable "no-threshold" assumption is one funded by its own Health Effects Institute. And importantly, the "no-threshold" assumption violates the foundational principle of toxicology. It is the dose that makes the poison. The EPA's defense of this absurdly precautionary assumption is another way of saying that the point at which all risk is zero cannot be proven. This is not surprising. How can any negative proposition be proven with complete certainty?

The EPA also maintains that its adoption of a "no-threshold" assumption in 2009 was endorsed by the agency's various scientific advisory panels. The growing evidence of financial conflicts of interest among the members of the EPA's technical review panels casts doubts on the objectivity of these review panels. Six of the seven members of the EPA's Clean Air Science Advisory Committee (CASAC) have received EPA grants to conduct research for the agency.[29] CASAC Chairman Jonathan Samet was the principal researcher for grants of $9.5 million dollars. The EPA's inspector general has begun an investigation of these alleged conflicts of interest.[30]

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Lives saved, deaths prevented or avoided, and premature mortality: the EPA's terms are misleadingly imprecise. "Avoided deaths" do not occur since clean air does not confer immortality.

Nor, despite extremely low concentrations of PM 2.5 in most areas of the country, did the EPA give any public notice of the regulatory implications of this sea-change in risk assessment of current air quality conditions. Public health scientists may have long debated the relative merits of no-threshold linear regression analysis, but these were scientific debates without the economic and societal implications at stake in the EPA's regulatory agenda, unprecedented in its cumulative impacts.

A growing number of policy makers, state agencies, scientists, physicians and concerned voters are baffled by the EPA's inflated claims about low levels of PM 2.5. Public disclosure of the data behind the EPA's claim has not been forthcoming even after repeated congressional requests. U.S. Rep. Andy Harris (R-MD), a medical doctor who chairs the Energy and Environment subcommittee of the House Science, Space and Technology Committee, typifies growing frustration with the lack of transparency in the EPA's science. "If our current air," he has said, "is such a threat to human health that it is killing hundreds of thousands of people each year, I am very interested to review the information the agency relies on in establishing this relationship … Because the EPA is not transparent with the sources of their data … EPA seems to rely on making statistical hay out of minor associations between pollutants and premature mortality."[31]

Assumption III: Statistical Constructs = "Lives Saved"

The EPA's public pronouncements trumpet the dire need for additional regulation to save thousands of lives. Such unequivocal, emotional pronouncements grossly mislead the public and can intimidate even the hardened skeptic. A headline on the summary for the EPA's "Benefits" study is typical: "In 2020, the CAA Amendments will prevent over 230,000 early deaths."[32] Administrator Jackson regularly tells the media the Clean Air Act has saved "literally hundreds of thousands of lives,"[33] or "public health protections will mean the difference between … life and death for hundreds of thousands of citizens."[34]

These "saved lives" are nothing more than statistical constructs; they do not refer to real people. When not speaking for public consumption, the EPA calls them "statistical lives." For the thousands of lives that the EPA claims air pollution has ended or that CAA regulation will save, there is not one identified individual. Nor are there specific medical conditions or causes of death attributed to PM 2.5 exposures. The EPA's typical approach is to assume any non-accidental death from cardiopulmonary conditions is caused by air quality.

Lives saved, deaths prevented or avoided, and premature mortality: the EPA's terms are misleadingly imprecise. "Avoided deaths" do not occur since clean air does not confer immortality. The health benefits the EPA projects from regulatory reduction of PM 2.5 is more accurately described as reduction in the relative risk of mortality. Extended life-expectancy or life-years gained more accurately describe the health benefit at issue.

The EPA constructs a "statistical life" (SL) by measuring the reduction in statistical risks assumed to result from reduction of ambient PM 2.5. "A 'statistical life' has traditionally referred to the aggregation of small risk reductions to many individuals until that aggregate reflects a total of one statistical life."[35] Quite obviously, "statistical lives saved" bear no relationship to actual individual human lives. The nearly $2 trillion monetary value of "preventing 230,000 deaths" in the Benefits Study derives from a simple calculation. The EPA monetizes the value of one statistical life at $8.9 million.

Thus: 230,000 "prevented deaths" x $8.9 million per statistical life saved = $1.8 trillion.

The EPA's valuation of one statistical life at $8.9 million is dubious. The EPA's favored studies find that the median age of people who gain additional life expectancy is 80 years. And the increased life expectancy is estimated in several months, not years. But when aggregated into one statistical life, the EPA sets a value of $8.9 million per statistical

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Figure 3: Health Benefits from PM 2.5 Reduction with Alternative Assumptions

VSL = Value of a Statistical Life
VSLY = Value of a Statistical Life Year

- One-sixth reduction of the EPA's $8.9 million for VSL/ VSLY for median age of 80 year old
- 50% probability (instead of 10%) that assumption of true association: PM2.5 and premature death
- 50% probability (instead of 10%) that association is causal
- 50% probability (instead of 10%) of no PM2.5 threshold ambient health effects cease
- 50% probability of reduction of health effects due to disease prevention & medication

Benefits Study: 230,000 SL X $8.9 million (per VSL) = $1.8 trillion benefits. Costs=$65 billion
With alternative assumptions above: Health Benefits = $19 billion. Costs = $65 billion
($1.8 trillion x(1/6)x(0.5)x(0.5)x(0.5)x(0.5) = $19 billion

Source: Cox #18 Green, LC, Armstrong, SR "Particulate Matter in Ambient Air and Mortality: Toxicologic Perspectives," Regulatory Toxicology and Pharmacology (2003) 38(3): 9-12.

life-year gained. That figure is more commonly used as a monetized value for a healthy 25-year old adult.[36] The monetized value of additional life expectancy for an 80-year old is typically estimated at about one-sixth the value of an individual 25 years old. Thus, if a more regularly used value for the octogenarian is used, the benefits decline by six-fold.

Thus: 230,000 "prevented deaths" x 1/6 of $8.9 million = $300 billion (instead of $2 trillion).

And if the factual accuracy of the EPA's three key assumptions is assigned a probability of 50 percent rather than 100 percent, the costs of regulatory reduction of PM 2.5 dwarfs the projected health benefits with a ratio of $65 billion (costs) to $19 billion (benefits). With the more plausible assumption of 50 percent probability, the estimated health benefits fall from almost $2 trillion to $19 billion. ***(See Figure 3)***. The EPA's dramatic claims are highly sensitive to the unjustified certainty ascribed to the assumptions. "The EPA's evaluation of health benefits is unrealistically high, by a factor that could well exceed 1,000 and that it is therefore very likely that the costs of the 1990 CAA exceed its benefits, plausibly by more that 50-fold."[37]

Assumption IV: Co-Benefits of PM 2.5 Reduction Can Justify Any Rule Under the CAA.

The EPA is now supporting new air quality regulations imposing multi-billion dollar costs on the basis of alleged mortality risks from trace levels of PM 2.5 created by the "no-threshold" approach. The EPA increasingly uses these "coincidental reductions" of PM 2.5 to justify the benefits of regulations intended to control not PM 2.5 but different pollutants such as mercury, ozone, and sulfur dioxide. The EPA's cost-benefit analysis calls these coincidentally occurring reductions "co-benefits."

This practice of relying on "co-benefits" from PM 2.5, evidently started in 1997 when the EPA issued the first NAAQS for PM 2.5. Since 2009, however, the EPA has increasingly used PM 2.5 co-benefits as the primary, if not exclusive, source of health benefits in rulemakings under the Clean Air Act directed to other pollutants. As examples, the EPA's mercury rule, industrial boiler rules, and the new SO2 NAAQS rely on co-benefits from PM 2.5 reduction for over 99 percent of estimated health benefits. Without these co-benefits, the EPA's regulatory analysis of direct costs of these rules would far exceed any measurable benefits.

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The EPA's "no-threshold" assumption in 2009 vastly increased the benefits that the EPA could ascribe to coincidental reduction of PM 2.5 in regulations not targeting this pollutant.

The EPA admits that the direct health benefits from reduction of mercury account for only 0.004 percent (or $6 million) of the health benefits. And the PM 2.5 co-benefits account for 99.996 percent of what the EPA values as $140 billion in health benefits. The EPA estimates the direct costs of the rule at $11 billion. The agency's press releases and congressional testimony do not acknowledge this huge gap between direct mercury benefits and indirect PM 2.5 benefits, but the Federal Register notice for this rule explicitly reveals the glaring gap.[38]

Dr. Anne Smith of National Economic Research Associates (NERA) has completed a thoroughly researched analysis of the EPA's use of co-benefits in "An Evaluation of the PM 2.5 Health Benefits Estimates in Regulatory Impact Analyses for Recent Air," a work from which this present paper draws heavily.[39] Dr. Smith analyzed the Regulatory Impact Analyses (RIA) for over 50 CAA-related rules promulgated since 1997. (*See Sidebar: Cost Benefit Analysis*).

As shown in *Figure 4 (next page)*, Dr. Smith found a growing reliance on co-benefits from PM 2.5 reductions. In 13 RIA's for rules not targeting PM 2.5, submitted between 2009-2011, co-benefits from PM 2.5 accounted for more than half of all estimated health benefits. In six of the cost-benefit analyses, co-benefits from PM 2.5 accounted for 100 percent of the benefits.

The EPA's "no-threshold" assumption in 2009 vastly increased the benefits that the EPA could ascribe to coincidental reduction of PM 2.5 in regulations not targeting this pollutant. As depicted in *Figure 2*, 94 percent of the 11,000 (statistical) lives purportedly "saved" by the mercury rule derive from PM 2.5 co-benefits in geographical areas that already attain the current PM 2.5 NAAQS of 15 ug/m3. Recall that NAAQS are conservative federal standards below which human health should be fully protected. The EPA's increasing reliance on co-benefits garnered from PM concentrations approaching background levels is an evasion of the EPA's fundamental responsibility under the CAA to *directly* regulate the criteria pollutants, of which PM 2.5 is one.

By relying on co-benefits from PM 2.5, the EPA also evades its obligation to justify the need for stricter regulations. Without the 99.9 percent plus co-benefits from PM 2.5, the EPA's case for the health benefits supposedly obtained under the recently issued National Emission Standards for Hazardous Air Pollutants (NESHAP) would evaporate. Consider also the mercury rule, acknowledged by the EPA to be the most expensive CAA regulation to date, and widely viewed as a threat to electric reliability. The rule is based on PM 2.5 co-benefits in areas now attaining the NAAQs. It becomes on these grounds a disservice to the public, to policy makers and not least to the many employees whose job may end as a result of this regulation.

If the EPA is convinced that ambient PM 2.5 now presents dire health risks, the agency should make its case for strengthening the PM 2.5 NAAQS. The EPA is now reviewing the current 15 ug/m3 NAAQS PM 2.5 and apparently may reduce that standard to a level within a range of 10 to 13 ug/m3 or lower. Co-benefits from another pollutant should not be used in a cost-benefit analysis to justify regulation of another pollutant.

"Clearly, EPA's PM 2.5 co-benefits habit is allowing EPA to avoid grappling with the important task of making a case that all of these other pollutants really require tighter controls. … but a high degree of complacency and analytical laziness has instead taken root … The situation is completely at odds with the purpose of RIAs, which is to provide a consistent, credible and thoughtful evaluation of the societal value gained with increased regulatory burden that new rulemakings create."[40]

"In all, EPA's use of co-benefits should end for several reasons. It scares the public into believing that large numbers of people [would] die prematurely were it not for implementation of new rules on pollutants for which EPA has not actually identified any current public health risk."[41]

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Figure 4: Degree of Reliance on PM 2.5-Related Co-Benefits in RIAs

Year	RIAs for Rules Not Targeting Ambient PM 2.5	PM Co-Benefits Are >50% of Total	PM Co-Benefits Are Only Benefits Quantified
1997	Ozone NAAQS (.12 1hr=>.08 8hr)	X	
1997	Pulp & Paper NESHAP		
1998	NOx SIP Call & Section 126 Petitions		
1999	Regional Haze Rule	X	
1999	Final Section 126 Petition Rule	X	
2004	Stationary Reciprocating Internal Combustion Engine NESHAP	X	
2004	Industrial Boilers & Process Heaters NESHAP	X	X
2005	Clean Air Mercury Rule	X	
2005	Clean Air Visibility Rule/BART Guidelines	X	
2006	Stationary Compression Ignition Internal Combustion Engine NSPS		
2007	Control of HAP from Mobile Sources	X	X
2008	Ozone NAAQS (.08 8hr=> .075 8hr)	X	
2008	Lead (Pb) NAAQS	X	
2009	New Marine Compression Ignition Engines > 30 l. per Cylinder	X	
2010	Reciprocating Internal Combustion Engines NESHAP -- Compression Ignition	X	X
2010	EPA/NHTSA Joint Light-Duty GHG & CAFES		
2010	SO2 NAAQS (1-hr, 75 ppb)	X	> 99.9%
2010	Existing Stationary Compression Ignition Engines NESHAP	X	X
2011	Industrial, Commercial, and Institutional Boilers NESHAP	X	X
2011	Industrial, Commercial, and Institutional Boilers & Process Heaters NESHAP	X	X
2011	Commercial & Industrial Solid Waste Incin. Units NSPS & Emission Guidelines	X	X
2011	Control of GHG from Medium & Heavy-Duty Vehicles		
2011	Ozone Reconsideration NAAQS	X	
2011	Utility Boiler MACT NESHAP *(Final Rule's RIA)*	X	≥ 99%
2011	Mercury Cell Chlor Alkali Plant Mercury Emissions NESHAP	X	
2011	Sewage Sludge Incineration Units NSPS & Emission Guidelines	X	X

Source: A. Smith, Co-Benefits, p.18.

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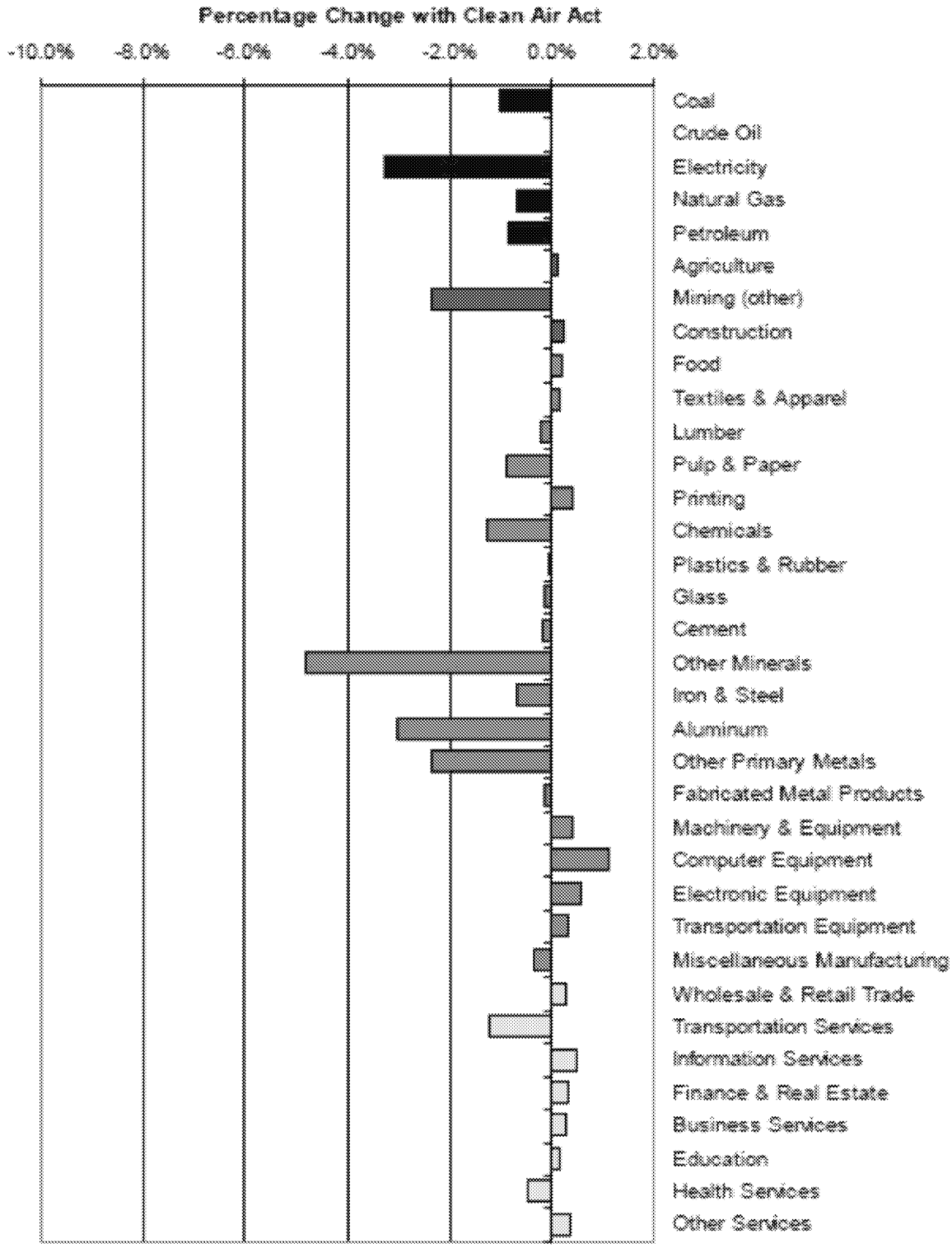
Figure 5: Business Impacts



Note: Percentage change in productivity under the CAA for the year 2020. EPA estimate by EMPAX-CGE model.
Source: EPA Benefits Study, p. 8-20

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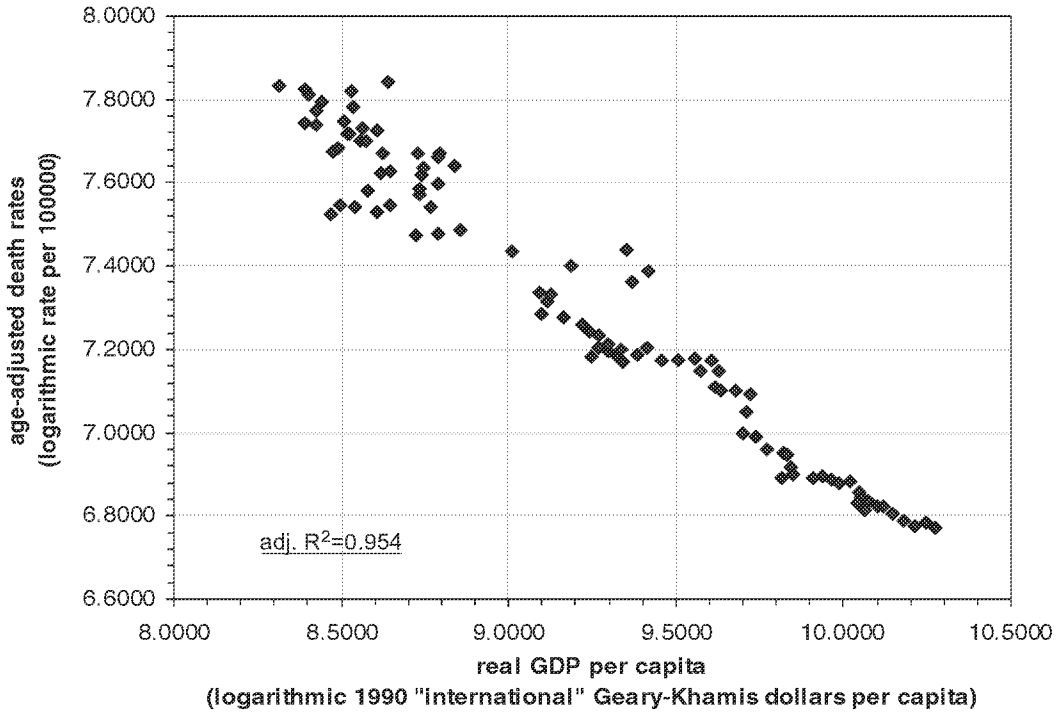
Figure 6: Health Effects of Poverty and Unemployment



Source: Brenner MH Int., J. Epidemiol. (2005) 34: 1214-1221.

Conclusion

Many reputable scientific bodies have severely criticized the weakness of the science the EPA now relies upon to justify new rules. Among these critics: the National Academy of Science and the National Research Service, along with the EPA's own Scientific Advisory Board, Board of Scientific Counselors, and Clean Air Act Advisory Council. Dr. Thomas Burke, chairman of a recent National Academy of Science (NAS) review panel on the EPA's chemical risk assessment, told EPA officials that "EPA science is on the rocks … if you fail, you become irrelevant, and that is kind of a crisis."[42] The EPA's chemical risk assessment for formaldehyde set the level for adverse health effects—and thus regulations—several times lower than the average natural level of formaldehyde in human exhalation.[43]

Current EPA science has a pattern. The agency relies on one or two cherry-picked studies which indicate the most adverse health effects at the lowest concentration of the pollutant in question. The EPA either ignores or gives lip service to sometimes hundreds of equally reputable studies that contradict these studies. The EPA's favored studies are usually ecological epidemiological studies that show intricately manipulated statistical associations rather than data-driven causal connections between pollutant levels and adverse health effects. And instead of characterizing the relative uncertainties in the scientific studies on which the EPA relies, and weighing the evidence from diverse studies, the EPA publicly declares complete certainty and approval by peer review. Upon a closer look, the peer-reviewers regularly are either EPA employees, scientists who wrote the relevant studies or were employed by the same institution which the EPA paid to conduct the study.[44]

The EPA would have the public believe that "pure science" shows that a fossil-fuel supplanting agenda is necessary to save the lives of hundreds of thousands. Note in *Figure 5*, the EPA's Benefits Study projects the decline of fossil fuel based industry as well as the energy intensive manufacturing and chemical industries dependent on affordable, efficient fossil fuels.

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Sound science and objective scientists abound. Science in the hands of government, however, is easily compromised in order to reach predetermined policy outcomes.

Environmental regulatory standards reflect a judgment about what is acceptable or unacceptable societal risk. As such, the EPA's final regulatory decisions are ultimately policy decisions that no scientific findings can dictate. The EPA's manipulation of cost-benefit analyses to project massive benefits at comparatively modest cost denies policymakers and the public the information needed to weigh the many trade-offs involved in complex societal decisions about unacceptable risks. Economic impact does matter, and it matters to health. Many studies show that income and employment strongly correlate with health and life span. *(See Figure 6)*

Sound science and objective scientists abound. Science in the hands of government, however, is easily compromised in order to reach predetermined policy outcomes. If the current EPA's policy objective is to supplant fossil fuels, PM 2.5 is a useful tool. PM 2.5 is an ever-present byproduct of combustion of coal, natural gas, and oil. Emissions from cars and trucks, however, have been reduced by over 90 percent, at the same time vehicle miles traveled increased by 165 percent.[45] Natural processes will always release fine particles into the ambient atmosphere of this planet.

The EPA's science is, indeed, on the rocks, as the chairman of the NAS review concluded. The Clean Air Act under which the EPA conducts risk assessment and sets national standards needs to stipulate minimal criteria for scientific risk assessment of health effects, sufficiently robust to guide decisions on air quality standards. Such minimal criteria would include the following:

- The EPA's risk assessments must be peer-reviewed by an independent body—not, as now, within the agency itself.
- Toxicological studies and clinical trials demonstrating causal connections between ambient levels of a pollutant and adverse health effects trump epidemiological studies indicating statistical correlations. Ecological epidemiological studies, alone, are not rigorous enough to set national ambient or emission standards.
- Abandonment of no threshold linear regression modeling assumptions in setting ambient standard or regulatory emission limits.
- Health-based air quality standards that incorporate representative estimates of actual exposure and not the implausible assumption of 24-hour exposure to the highest monitored level.
- Physical measurement through monitored readings trump models.
- A plausible biological mechanism as predicate for health-effects findings.
- Comprehensive, cumulative cost-benefit analysis of all rules according to methodology and scope stipulated in law.

The EPA's regulatory sway is at a tipping point. Existing technologies cannot meet the EPA's new emission limits unless this country overnight can replace 85 percent of the energy on which our current way of life relies. Short of a miraculous breakthrough in technology, the EPA's regulatory agenda is a perilous pipe-dream precluded by the laws of math and physics. ✯

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About the Author

Kathleen Hartnett White joined the Texas Public Policy Foundation in January 2008. She is a Distinguished Senior Fellow-in-Residence and Director of the Armstrong Center for Energy & the Environment.

Prior to joining the Foundation, White served a six-year term as Chairman and Commissioner of the Texas Commission on Environmental Quality (TCEQ). With regulatory jurisdiction over air quality, water quality, water rights & utilities, storage and disposal of waste, TCEQ's staff of 3,000, annual budget of more than $600 million, and 16 regional offices make it the second largest environmental regulatory agency in the world after the U.S. Environmental Protection Agency.

Prior to Governor Rick Perry's appointment of White to the TCEQ in 2001, she served as then Governor George Bush appointee to the Texas Water Development Board where she sat until appointed to TCEQ. She also served on the Texas Economic Development Commission and the Environmental Flows Study Commission. She is now serving in her fifth gubernatorial appointment as an officer and director of the Lower Colorado River Authority.

White is also co-owner of White Herefords and a partner with her husband in a 125 year-old ranching operation in Jeff Davis and Presidio counties. She also is Vice-Chairman of the Texas Water Foundation and sits on the board of the Texas Natural Resource Foundation. She recently received the 2007 Texas Water Conservation Association's President's award, the Colorado River Foundation's Friend of the River Award and the Texas Chemical Council's Leadership Award.

A writer and consultant on environmental laws, free market natural resource policy, private property rights, and ranching history, White received her bachelor *cum laude* and master degrees from Stanford University where for three years she held the Elizabeth Wheeler Lyman Scholarship for an Outstanding Woman in the Humanities. She was also awarded a Danforth National Fellowship for doctoral work at Princeton University in Comparative Religion and there won the Jonathan Edwards Award for Academic Excellence. She also studied law under a Lineberry Foundation Fellowship at Tech University.

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on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 6/28/2018 2:17:09 PM
To: Woods, Clint [woods.clint@epa.gov]
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Oil boom!

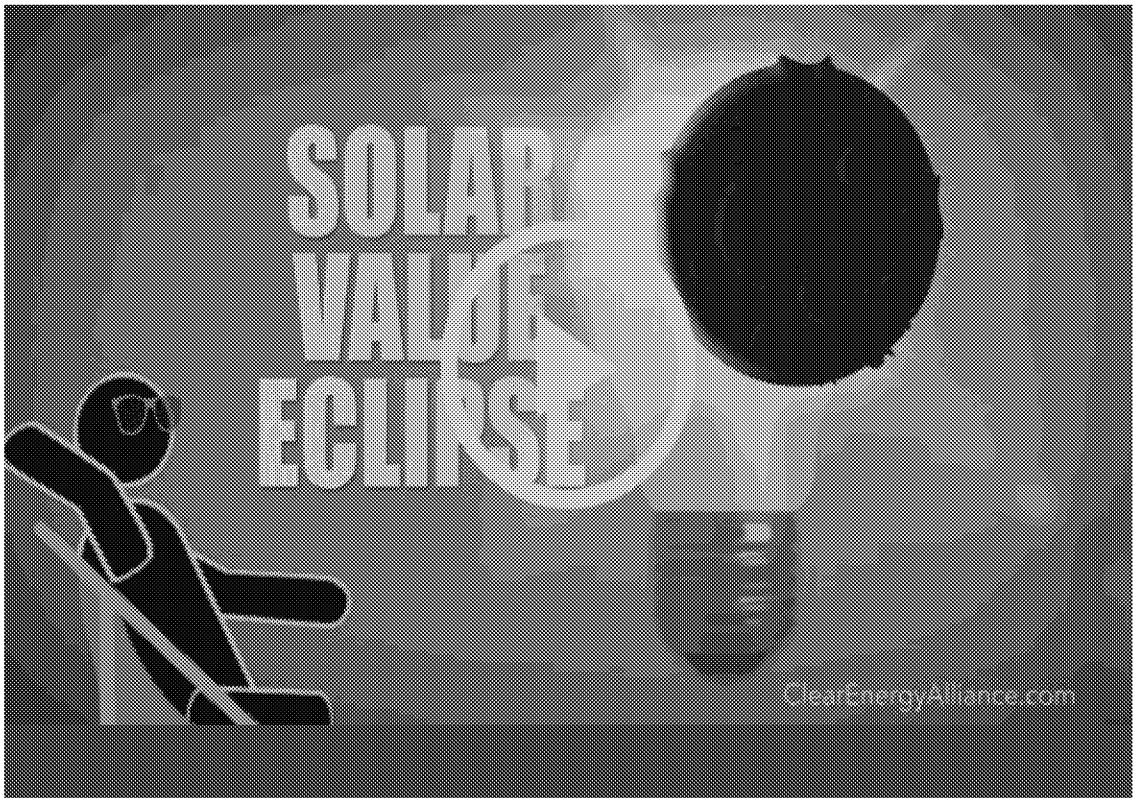
Wall Street Journal (6/26/18) reports: "From Texas to North Dakota, oil-producing regions of the U.S. are surging now that America is pumping record volumes of crude—10.9 million barrels a day during the second week of June, according to the Energy Information Administration. The leap from 9.4 million barrels a day a year ago is helping lift the U.S. economy as a whole, redefining the sweet spot at which oil prices are a tailwind for the country."

"The Green New Deal we are proposing will be similar in scale to the mobilization efforts seen in World War II or the Marshall Plan. It will require the investment of trillions of dollars and the creation of millions of high-wage jobs. We must again invest in the development, manufacturing, deployment, and distribution of energy but this time green energy."

-Alexandria Ocasio-Cortez,
NY Democratic Congressional Candidate

The solar value eclipse is here.

Clean Energy Alliance (6/27/18): "Do you know what it feels like to work with someone who arrives late, does work that others could easily do, harms others productivity, and then skips out when they're most needed? It's frustrating isn't it? Welcome to the Solar Value Eclipse. Instead of adding value and efficiency to the electric grid, having too much solar harms the grid's reliability, it's fundamental economics, and it costs you more money."



Is this why my sweatpants always seem a bit damp?

The Daily Caller (6/27/18) reports: "More than 2,300 comments were filed with the DOE asking regulators to allow faster dishwashers before the comment period closed June 25. The agency fielded requests from the public on the issue after receiving a petition in March from the Competitive Enterprise Institute, a free-market group based in Washington, D.C... DOE regulators plan to impose roughly 23 energy-efficiency regulations for household appliances by 2018, and already the home appliance industry and policy experts find these rules just make appliances cost more and perform poorly."

Leaked memo shows Trump planning deep 2020 budget cuts.

E&E News (6/27/18) reports: "The Trump administration is planning deeper funding cuts at federal agencies next year, including programs on renewable

energy, climate change, energy efficiency and science research, according to a leaked Department of Energy document obtained by E&E News."

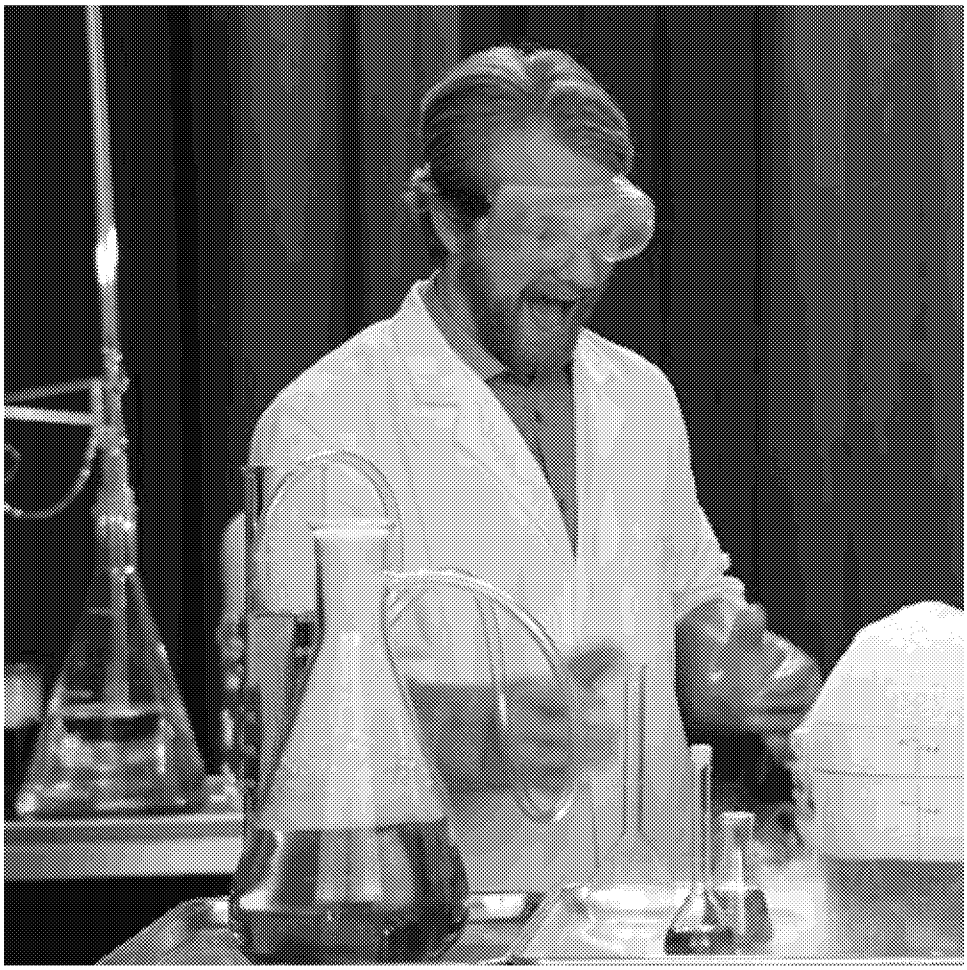
Pruitt restricts EPA veto power on wetland permits.

E&E News (6/27/18) reports: "Administrator Scott Pruitt has moved to restrict EPA's ability to nix water pollution permits, in a rebuke of how the Obama administration used the agency's veto power... It eliminates EPA's ability to move against a project before a permit application has been filed with the Army

Corps and eliminates the agency's ability to retroactively veto a project post-permit."

Politicized science.

The Hill (6/27/18) reports: "Four GOP senators, meanwhile, are targeting climate change advocacy in another way. They want the National Science Foundation's internal watchdog to investigate why Climate Central, a nonprofit group, received millions of dollars to help television meteorologists understand the science of climate change. The Republican senators say that amounted to advocacy."



Energy Markets

WTI Crude Oil: ↓ $72.59
Natural Gas: ↓ $2.98
Gasoline: $2.85
Diesel: $3.16
Heating Oil: ↑ $218.61
Brent Crude Oil: ↑ $77.99
US Rig Count: ↓ 1108

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Dr. John S. Baker, Jr.
Visiting Professor
Georgetown University Law Center

The Dormant Commerce Clause of the Constitution prohibits states from imposing excessive burdens on interstate commerce without congressional approval. Consistent with this doctrine, in 1967, the Supreme Court held that a state cannot require an out-of-state seller with no physical presence in that state to collect and revoke taxes for goods sold or shipped into the state. The Court affirmed this holding in 1992 and 2015. However, in 2015, Justice Kennedy wrote a concurring opinion asking whether the Court should continue following precedent in light of additional dormant Commerce Clause cases and the recent significant technological and social changes that affect interstate commerce.

In 2016, the South Dakota Legislature passed a law requiring sellers of "tangible personal property" who do not have a physical presence in the state to remit sales tax according to the same procedures as sellers who do have a physical presence. The act limited the obligation to sellers with gross revenue from sales in South Dakota over $100,000, or 200 or more separate transactions, within one year.

The legislation's stated purpose was to help the state maintain revenue in the face of growing internet sales and a decrease in sales tax collections.

Following the passage of the law, South Dakota sued many retailers who failed to comply. The state courts of South Dakota ruled for the retailers, considering themselves "duty bound to follow" the previous Supreme Court rulings. On June 27, the Supreme Court ruled in favor of South Dakota in a 5-4 decision authored by Justice Kennedy.

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Speaker Biographies

Dr. John S. Baker, Jr.

Dr. John Baker is a Visiting Professor at Georgetown Law School and at Peking University School of Transnational Law. He has been a Visiting Fellow at Oriel College, the University of Oxford (2012-2014). He is Professor Emeritus of Law, and previously the Dale E. Bennett Professor of Law, at Louisiana State University Law School. He was an adjunct Fellow at the Heritage Foundation (Spring, 2008) and a Distinguished Scholar at the Catholic University of America Law School (2011-12). He has also taught at Tulane Law School, George Mason Law School, Pepperdine Law School, New York Law School, Hong Kong University, and the University of Dallas, School of Management He has been a Visiting Professor at the University of Lyon III (France) (1999-2011) and at the Universidad de los Andes, Chile, where he was a Fulbright Specialist in 2012. He has lectured at universities and research institutes in Argentina, Austria, Brazil, China, Croatia, Peru, Slovenia, Taiwan, Vietnam, and the Philippines, where he was a Fulbright Fellow (2006).

In addition to law review articles and book chapters, Dr. Baker's academic publications include: *Hall's Criminal Law: Cases and Materials* (with Benson, Force and George; 5th ed. Michie, 1993); *An Introduction to the Law of the United States* (ed. with Levasseur; University Press of America, 1992). He has also published on Forbes.com, FoxNews.com, in *The Washington Times*, and a number of times in *The Wall Street Journal*.

He argues in federal court, including two oral arguments in the U.S. Supreme Court. For years, he taught courses for the Federalist Society on separation of powers with the late Supreme Court Justice Antonin Scalia. In September, 2016, he taught a Supreme Court seminar in China with Justice Samuel Alito.

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Message

From: American Energy Alliance [info=americanenergyalliance.org@mail228.sea101.rsgsv.net]
on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 6/27/2018 2:04:07 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Walk me through this...

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In the Pipeline

MORNING ENERGY NEWS | 6.27.2018

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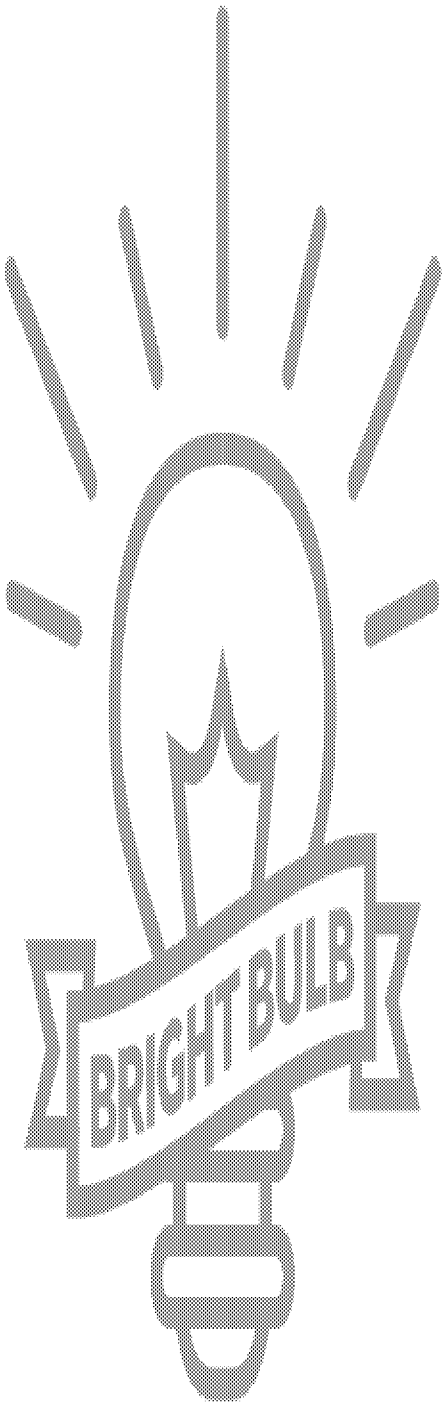
We talk about ethanol interests. We talk about refining interests. How about consumer interests?

The Hill (6/26/18) reports: "The Trump administration is proposing to modestly increase the amount of ethanol and other biofuels that the nation's oil refiners have to blend into the gasoline and diesel they sell. Under the proposal released Tuesday by the Environmental Protection Agency (EPA), the overall biofuel mandate under the Renewable Fuel Standard (RFS) would be 19.88 billion gallons in 2019, a 3.1 percent increase over the 2018 levels. Only 15 billion gallons of that could be traditional ethanol made from feedstocks like corn and soy, while the rest would have to be other biofuels like cellulosic ethanol and biodiesel. The proposal comes amid efforts by President Trump to balance strong ethanol interests in the country's heartland and oil and refinery interests, both of whom are lobbying aggressively for changes to how the EPA enforces biofuels rules."



"The present strategy of changing existing legal precedent for the single-minded purpose of hindering and ultimately ending Exxon Mobil's fossil fuel activities is unlikely to succeed. But if it does, the negative ramifications will be felt by far more than just fossil fuel producers."

– Tristan R. Brown, State University of New York

On the road again.

Energy In Depth (6/26/18) reports: "Institute for Energy Research and American Energy Alliance president Thomas Pyle recently toured Pennsylvania's northeast Marcellus Shale, making stops in Williamsport, Tunkhannock and Harrisburg to discuss the game-changer that shale has been for the Commonwealth. Pyle explained at each stop that America is in the midst of a 'bona fide energy renaissance,' and that the United States now has 'a demand opportunity,' rather than supply problem, thanks to shale. As Pyle wrote in a *Patriot-News* op-ed on Tuesday, 'Pennsylvania is at the forefront of this energy revolution..Not only is gas from the Marcellus Shale powering the state and our entire region, it's also being used to power cities halfway around the world.'"

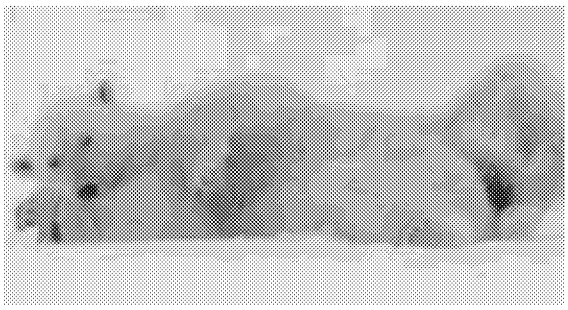
Keys for the Keystone State.

Penn Live (6/26/18) op-ed from AEA: "With the right policies in place, Pennsylvania's natural gas producers can continue to provide good-paying jobs for families and steady revenue for local communities. But the benefits go well beyond those within the state. Pennsylvania's natural gas helps meet our

domestic energy needs at home and increasingly around the world. Don't let Pennsylvania politicians kill the goose that laid the Keystone State's golden eggs."

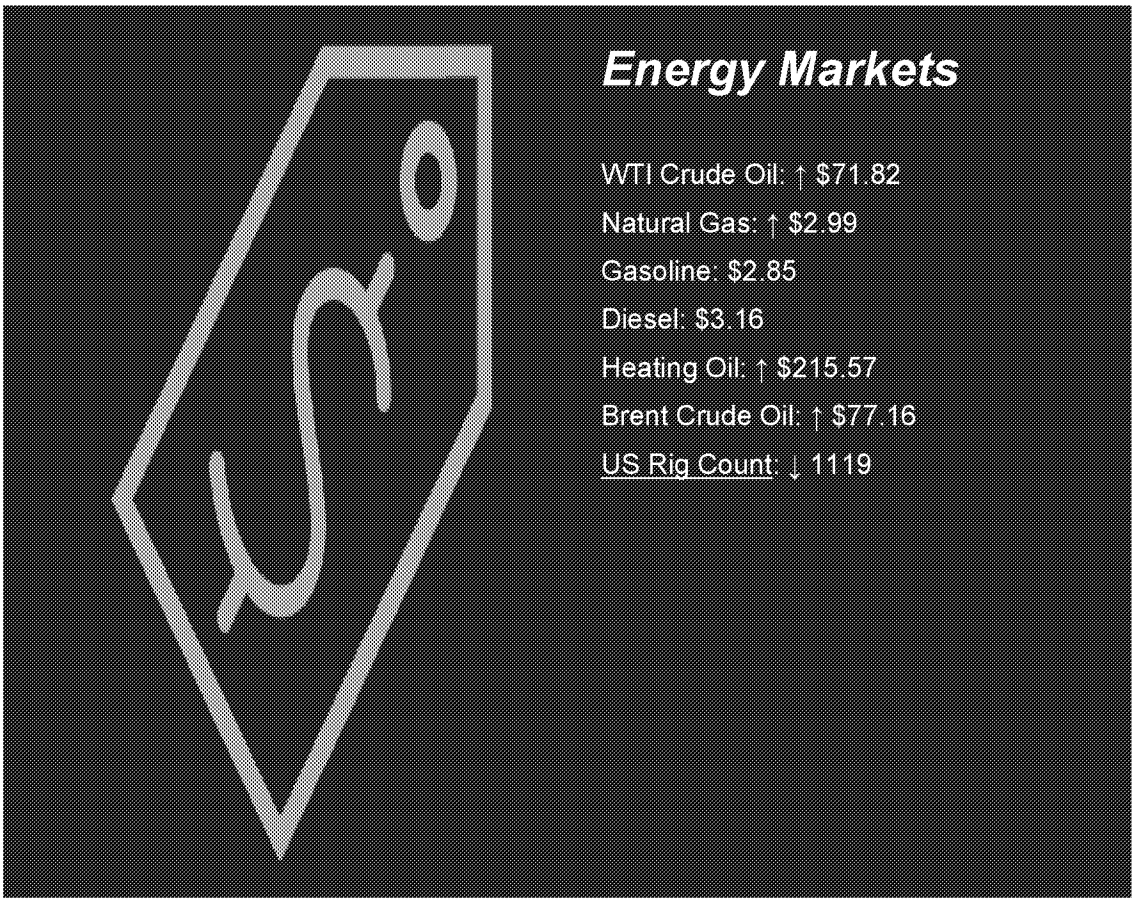
More bad news...for James Hansen.

Cato Institute (6/21/18) blog: "(T)he 2016 finding of Jason Briner (University of Buffalo) [shows] that the difference between warmest and coldest postglacial millennia is 5.4° +/- 1.8°F in Arctic Canada and Greenland. Last year, dating buried wood and cones, Leif Kullman found high latitude summer temperatures at least 3.6°C [6.5°F] warmer than today, between roughly 6,500 years to 11,200 (!) years ago. What did all this mean for Greenland? According to a very recent paper by Lisbeth Nielsen of University of Copenhagen, all that warming melted enough ice to raise sea level between ~0.15-1.2m (0.5-4.0 ft) over several thousand years. That's a far cry from Hansen's 20 feet in a hundred years, and it's telling that the 2016 Briner finding and Hansen's forecast were concurrent."



Nothing says innovation like the adoption of a pre-industrial fuel source...

Inside Climate News (6/24/18) reports: "The European Union declared this week that it could make deeper greenhouse gas cuts than it has already pledged under the Paris climate agreement. But its scientific advisors warn that the EU's new renewable energy policy could undermine that goal because it fails to fully account for the climate impacts of burning wood for fuel. By counting forest biomass, such as wood pellets used in power plants, as carbon-neutral, the new rules could make it impossible for Europe to achieve its climate goals, the European Academy of Sciences Advisory Council (EASAC) wrote in a strongly worded statement."



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Message

From: American Energy Alliance [info=americanenergyalliance.org@mail17.suw151.rsgsv.net]
on behalf of American Energy Alliance [info@americanenergyalliance.org]
Sent: 7/11/2018 2:24:47 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Half a league, half a league, half a league onward...

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MORNING ENERGY NEWS | 7.11.2018

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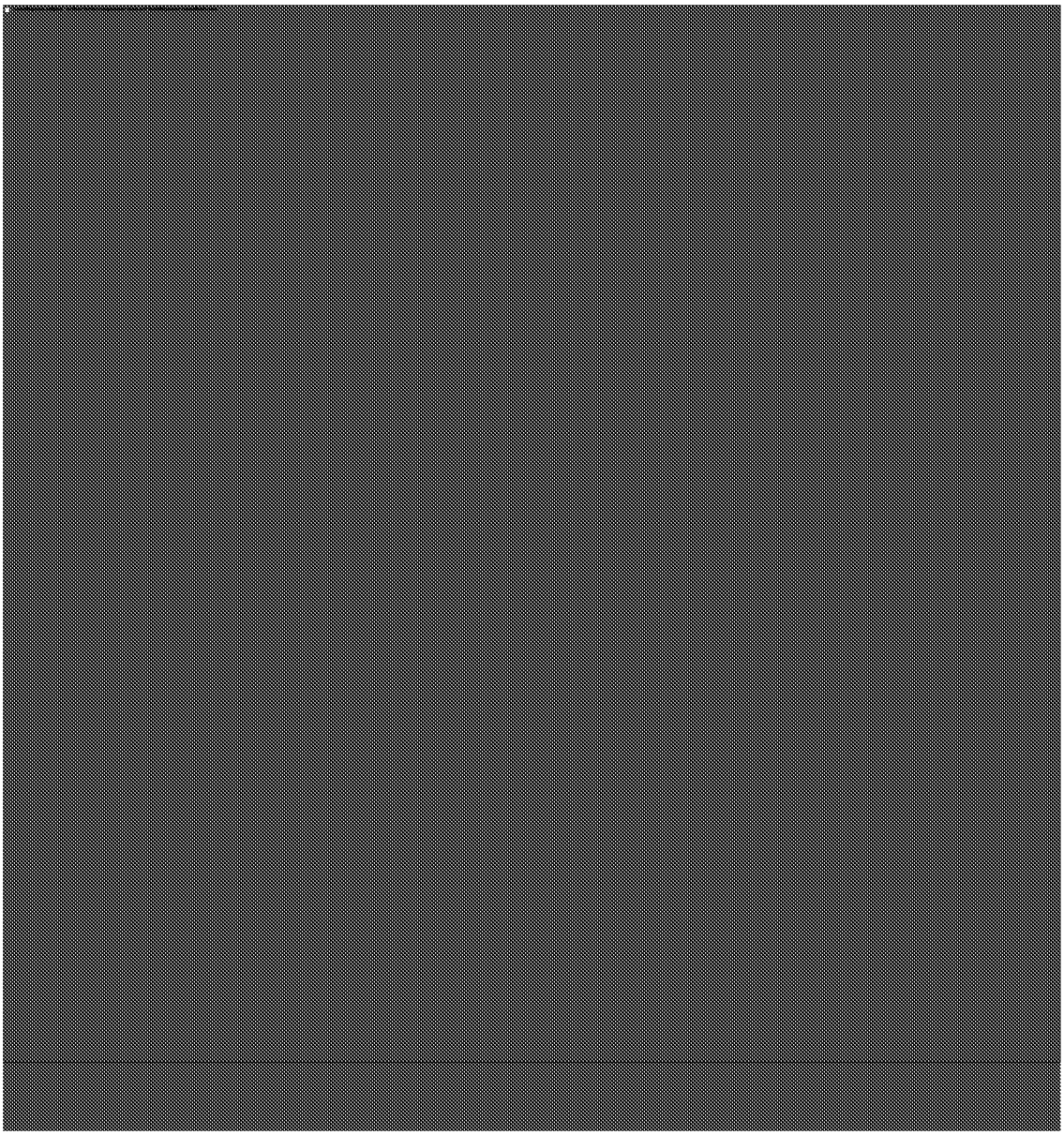
Leading the charge.

Politico (7/10/18) reports: "Nineteen conservative organizations, including the American Energy Alliance and the Competitive Enterprise Institute, sent a letter to House Speaker Paul Ryan and Majority Leader Kevin McCarthy on Monday requesting a vote in the chamber as soon as possible on a non-binding resolution opposing carbon taxes. The resolution, H. Con. Res. 119 (115), would express the sense of Congress that a carbon tax would be detrimental to the United States economy. 'There is simply nothing conservative about implementing a massive new energy tax under which the federal government would be empowered to collect hundreds of billions more dollars each year from American taxpayers, and then entrusted to do the "right" thing — however that may be defined — with its vast newfound stream of revenue,' the groups write in their letter."

The Hill (7/10/18) reports: "Conservative groups are pushing GOP House leaders to allow a vote on a non-binding resolution to condemn carbon taxes.

Eighteen organizations, including Americans for Tax Reform, the Competitive Enterprise Institute and FreedomWorks, say it is important for House Republicans to vocally denounce potential taxes on carbon dioxide emissions, even as some push for conservatives to endorse the idea. House Majority Whip Steve Scalise (R) introduced the resolution in April. It states that it is Congress's opinion that 'a carbon tax would be detrimental to American families and businesses, and is not in the best interest of the United States.'"



"This is just about transferring billions of dollars from the private sector to government control. And the scientists are either wrong, stupid, or the part of the conspiracy."

– Dori Monson, KIRO Radio

It's happening.

E&E News (6/28/18) reports: "The fate of a landmark Supreme Court climate change decision became uncertain after Justice Anthony Kennedy announced his retirement yesterday. Kennedy provided the crucial fifth vote in the 2007 decision, in which the court found EPA has the authority to regulate carbon dioxide emissions under the Clean Air Act. The case, *Massachusetts v. EPA*, set the stage for other Supreme Court decisions on greenhouse gas regulations and Obama-era efforts to address climate change. A more conservative Supreme Court could curtail the ruling's reach, or even eliminate it altogether.

At least two of the court's current conservative justices — Justices Samuel Alito and Clarence Thomas — have called for it to be overturned. Some legal experts fear that a right-leaning court wouldn't uphold any climate rules without Kennedy on the bench."

Progress.

Energy In Depth (7/10/18) reports: "One thing continues to be true about Ohio — when it comes to shale development, the battleground Buckeye State is all-in. Ohio Republicans and Democrats alike are in agreement that natural gas is the future for Ohio and is a win for the economy and the environment. To highlight this fact, both the Republican and Democratic candidates for Ohio Governor believe that shale development is in fact a 'win-win.'"

Energy Markets

WTI Crude Oil: ↓ $73.36
Natural Gas: ↑ $2.81
Gasoline: ↑ $2.87
Diesel: $3.17
Heating Oil: ↓ $218.92
Brent Crude Oil: ↓ $77.34
US Rig Count: ↑ 1129

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Message

From: Dolley Madison [fedsoc@fed-soc.ccsend.com]
on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 4/29/2019 3:48:03 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: Teleforum Starting Now: Update on the Mueller Report

The Federalist Society

April 29, 2019

Teleforum Starting NOW

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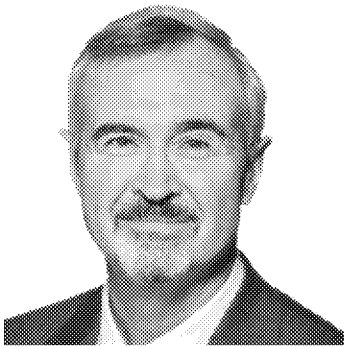
Update on the Mueller Report

The Practice Groups

Monday, April 29, 2019 | 12:00 p.m. ET



John G. Malcolm
Vice President
Institute for Constitutional Government
Director
Meese Center for Legal & Judicial Studies
and Senior Legal Fellow
The Heritage Foundation

Prof. John C. Yoo
Emanuel S. Heller Professor of Law
University of California at Berkeley
School of Law

Special Counsel Robert Mueller's *Report on The Investigation Into Russian Interference In the 2016 Presidential Election* was released to the public on April 18th, 2019, capping off a nearly two year-long investigation into the allegations of collusion between the Donald Trump campaign and Russian government officials during the 2016 election. The conclusions of the report are divided into two volumes. Volume I details the extent to which Russia attempted to influence the outcome of the election. Volume II addresses the claims of obstruction of Justice. What do the conclusions mean for the Trump Administration and the country going forward?

Speaker Biographies

John G. Malcolm

John G. Malcolm oversees The Heritage Foundation's work to increase understanding of the Constitution and the rule of law as director of the think tank's Edwin Meese III Center for Legal and Judicial Studies. Mr. Malcolm, who also is Heritage's Ed Gilbertson and Sherry Lindberg Gilbertson senior legal fellow, brings to the challenge a wealth of legal expertise and experience in both the public and private sectors.

Before being named director of the Meese Center in July 2013, Mr. Malcolm spearheaded the center's rule of law programs. His research and writing as senior legal fellow focused on criminal law, immigration, national security, religious liberty and intellectual property. The Meese Center works to educate government officials, the media and the public about the Constitution and legal principles -- and how they affect public policy. The center was founded in 2001 and overseen until early 2013 by the conservative icon whose name it bears, former Attorney General Edwin Meese III.

In addition to his duties at Heritage, Mr. Malcolm is chairman of the Criminal Law Practice Group of the Federalist Society and chairman of the board of directors for Boys Town Washington, D.C., which provides homes and services to troubled children and families who are edging toward crisis.

Before joining Heritage in 2012, Mr. Malcolm was general counsel at the U.S. Commission on International Religious Freedom as well as a distinguished practitioner in residence at Pepperdine Law School. An independent and bipartisan panel, USCIRF reviews reported violations of religious freedom around the world and makes policy recommendations to the president, the secretary of state and Congress.

From 2004 to 2009, Mr. Malcolm was executive vice president and director of worldwide anti-piracy operations for the Motion Picture Association of America. He served as a deputy assistant attorney general in the Department of Justice's Criminal Division from 2001 to 2004, where he oversaw sections on computer crime and intellectual property, domestic security, child exploitation and obscenity, and special investigations. Immediately prior to that, he was a partner in the Atlanta law firm of Malcolm & Schroeder, LLP.

From 1990 to 1997, Mr. Malcolm was an assistant U.S. attorney in Atlanta, assigned to the fraud and public corruption section, and also an associate independent counsel, investigating fraud and abuse in the Department of Housing and Urban Development. He was honored with the Director's Award for Superior Performance for his work as an assistant U.S. attorney in the successful prosecution of Walter Leroy Moody Jr., who assassinated an 11th Circuit judge and the head of the Savannah chapter of the NAACP.

Mr. Malcolm began his law career as a law clerk to a federal district court judge and a federal appellate court judge as well as an associate at the Atlanta-based law firm of Sutherland, Asbill & Brennan. He is a graduate of Harvard Law School and holds a bachelor's degree in economics from Columbia College.

Prof. John C. Yoo

John Yoo is the Emanuel Heller Professor of Law at the University of California at Berkeley and a Visiting Scholar at the American Enterprise Institute. His latest book, *Striking Power: How Cyber, Robots, and Space Weapons Change the Rules for War*, was published in September 2017.

His other books include *Point of Attack* (Oxford UP 2014); *Taming Globalization* (Oxford UP 2012), *Confronting Terror* (Encounter 2011); *Crisis and Command* (Kaplan 2010); *War by Other Means* (Grove/Atlantic 2006); and *The Powers of War and Peace* (Chicago UP 2005). In 2014, Professor Yoo co-founded the Korea Law Center, the nation's leading center for the study of U.S.-Korean legal issues, and he directs Berkeley's Public Law and Policy program.

Professor Yoo has published numerous articles in the United States' top law journals. He also regularly contributes to the editorial pages of *The Wall Street Journal, New York Times, Washington Post, Los Angeles Times, National Review*, and *The Weekly Standard*, among others. He has also been a columnist for his hometown newspaper, *The Philadelphia Inquirer*.

Professor Yoo has served in all three branches of government. He was an official in the Office of Legal Counsel of the U.S. Department of Justice, where he worked on national security and terrorism issues after the September 11 attacks. He served as general counsel of the U.S. Senate Judiciary Committee under Chairman Orrin Hatch of Utah. He has been a law clerk for Justice Clarence Thomas of the U.S. Supreme Court and Judge Laurence Silberman of the U.S. Court of appeals in Washington, DC. He has been a visiting professor at Seoul National University, Trento University, University of Chicago, and the Free University of Amsterdam.

Professor Yoo graduated from Yale Law School, where he was an articles editor of the *Yale Law Journal*, and summa cum laude from Harvard College with a degree in American history.

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Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 6/5/2019 10:13:43 PM
To: Palmieri, Rosario A. EOP/OMB [rpalmieri@omb.eop.gov]
CC: Bolen, Brittany [bolen.brittany@epa.gov]; Wehrum, Bill [Wehrum.Bill@epa.gov]
BCC: Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]
Attachments: FRN_Request for Nominations_PM Uncertainty 6 5 19 final.pdf

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/2/2019 6:55:06 PM
To: Harlow, David [harlow.david@epa.gov]
Subject: FW: New IQG Case: RFC 18003 - NATA/Ethylene Oxide
Attachments: RFC 18003 Request.pdf

From: Shoaff, John
Sent: Monday, September 24, 2018 10:25 AM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Cc: Lewis, Josh <Lewis.Josh@epa.gov>
Subject: FW: New IQG Case: RFC 18003 - NATA/Ethylene Oxide

Bill et al,

Thought you might want to be aware of this new IQG case, see attached. Our QA poc, Tom Eagles, just received it from OEI and will likely touch base with Kelly R. in OAQPS for awareness and need for SME with request. Thx.

John

JOHN SHOAFF | DIRECTOR
OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-B
1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA
Shoaff.john@epa.gov | **1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE**

From: Kirby, Kevin
Sent: Monday, September 24, 2018 10:05 AM
To: Eagles, Tom <Eagles.Tom@epa.gov>
Subject: New IQG Case: RFC 18003 - NATA/Ethylene Oxide

Good Morning Tom,
We just received a new RFC challenge dealing with the NATA framing of EO.
Could you please help me discern the SMEs for this so that I can get a Scoping Team meeting scheduled ASAP.
As you know, we stretch to get the response out within 90 days.
Thanks,
Kevin

Kevin J. Kirby
Enterprise Data Architect
US Environmental Protection Agency

OEI/OEIP/EQMD
202 566-1656 desk

Appointment

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 5/21/2019 6:17:58 PM
To: Idsal, Anne [idsal.anne@epa.gov]

Subject: Meet with state environmental policy experts (CONFIRMED)
Attachments: Re: Meet with state environmental policy experts
Location: DCRoomARN5415PolyPCTB/DC-ARN-OAR

Start: 5/22/2019 3:00:00 PM
End: 5/22/2019 3:45:00 PM
Show Time As: Tentative

TO: Justin Schwab, Stephen Gordon
Cc: Josh Lewis

Visiting Participants:

David Stevenson, Policy Director Caesar Rodney Institute - Delaware
Isaac Orr, Policy Fellow Center of the American Experiment – Minnesota
Gordon Tomb, Senior Fellow Commonwealth Foundation - Pennsylvania
Brit Naas, Independence Institute - Colorado
Jason Hayes, Director of Environmental Policy Mackinac Center for Public Policy - Michigan
Wayne Winegarden, PH.D., Senior Fellow Business and Economics Pacific Research Institute - California
Hannah Downey, Policy and Partnerships Coordinator Property and Environment Research Center, Montana/nationwide
Bette Grande, CEO Rough Rider Institute - North Dakota
The Honorable Jason Isaac, Senior Manager and Distinguished Fellow, Life: Powered Texas Public Policy Foundation (nationwide + DC office)
Tyler Shankel, Economic Policy Analyst The Buckeye Institute – Ohio
Todd Myers, Director, Center for the Environment Washington Policy Center

As of May 7, 2019: Scheduled per CW request.-Susan

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 3/25/2019 2:31:53 PM
To: Jones, Lindsey [jones.lindsey@epa.gov]
Subject: Fwd: Materials: Benefits Discussion, PM NAAQS Review Discussion, Fugitive Emission Rule
Attachments: Wehrum benefits briefing ACE Final 022619.pptx; ATT00001.htm

Begin forwarded message:

From: "Dominguez, Alexander" <dominguez.alexander@epa.gov>
Date: February 26, 2019 at 9:45:31 AM EST
To: "Woods, Clint" <woods.clint@epa.gov>
Subject: FW: Materials: Benefits Discussion, PM NAAQS Review Discussion, Fugitive Emission Rule

---

From: Ward, Hillary
Sent: Monday, February 25, 2019 1:04 PM
To: OAR Briefings <OAR_Briefings@epa.gov>
Cc: McKinney, Voronina <mckinney.voronina@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: Materials: Benefits Discussion, PM NAAQS Review Discussion, Fugitive Emission Rule

Hello,

Please see the attached materials for the following meetings.

2/26/19, 10:00 AM to 11:00 AM, Benefits Discussion with HEID
2/26/19, 11:15 AM to 12:15 PM, PM NAAQS Review Discussion
2/26/19, 3:45 PM to 4:45 PM, Fugitive Emissions Rule Consideration

Please let me know if you have questions.

Hillary Ward
USEPA, Office of Air Quality Planning and Standards
(919)541-3154

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 9/26/2018 12:30:08 PM
To: Woods, Clint [woods.clint@epa.gov]
Attachments: EPA-SAB-18-003+Unsigned.pdf; ATT00001.txt

https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebProjectsCurrentBOARD/4ECB44CA28936083852582BB004ADE54/$File/EPA-SAB-18-003+Unsigned.pdf

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 10/2/2018 7:13:24 PM
To: Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Dominguez, Alexander [dominguez.alexander@epa.gov]
Subject: APNewsBreak: EPA says a little radiation may be healthy

We've asked for a retraction

https://apnews.com/

APNewsBreak: EPA says a little radiation may be healthy

WASHINGTON (AP) — The Trump administration is quietly moving to weaken U.S. radiation regulations, turning to scientific outliers who argue that a bit of radiation damage is actually good for you — like a little bit of sunlight.

The government's current, decades-old guidance says that any exposure to harmful radiation is a cancer risk. And critics say the proposed change could lead to higher levels of exposure for workers at nuclear installations and oil and gas drilling sites, medical workers doing X-rays and CT scans, people living next to Superfund sites and any members of the public who one day might find themselves exposed to a radiation release.

The Trump administration already has targeted a range of other regulations on toxins and pollutants, including coal power plant emissions and car exhaust, that it sees as costly and burdensome for businesses. Supporters of the EPA's new proposal argue the government's current no-tolerance rule for radiation damage forces unnecessary spending for handling exposure in accidents, at nuclear plants, in medical centers and at other sites.

"This would have a positive effect on human health as well as save billions and billions and billions of dollars," said Edward Calabrese, a toxicologist at the University of Massachusetts who is to be the lead witness at a congressional hearing Wednesday on EPA's proposal.

Calabrese, who made those remarks in a 2016 interview with a California nonprofit, was quoted by EPA in its announcement of the proposed rule in April. He declined repeated requests for an interview with The Associated Press. The EPA declined to make an official with its radiation-protection program available.

The regulation change is now out for public comment, with no specific date for adoption.

Radiation is everywhere, from potassium in bananas to the microwaves popping our popcorn. Most of it is benign. But what's of concern is the higher-energy, shorter-wave radiation, like X-rays, that can penetrate and disrupt living cells, sometimes causing cancer.

As recently as this March, the EPA's online guidelines for radiation effects advised: "Current science suggests there is some cancer risk from any exposure to radiation."

"Even exposures below 100 millisieverts" — an amount roughly equivalent to 25 chest X-rays or about 14 CT chest scans — "slightly increase the risk of getting cancer in the future," the agency's guidance said.

But that online guidance — separate from the rule-change proposal — was edited in July to add a section emphasizing the low individual odds of cancer: "According to radiation safety experts, radiation exposures of ...100 millisieverts usually result in no harmful health effects, because radiation below these levels is a minor contributor to our overall cancer risk," the revised policy says.

Calabrese and his supporters argue that smaller exposures of cell-damaging radiation and other carcinogens can serve as stressors that activate the body's repair mechanisms and can make people healthier. They compare it to physical exercise or sunlight.

Mainstream scientific consensus on radiation is based on deceptive science, says Calabrese, who argued in a 2014 essay for "righting the past deceptions and correcting the ongoing errors in environmental regulation."

EPA spokesman John Konkus said in an email that the proposed rule change is about "increasing transparency on assumptions" about how the body responds to different doses of dangerous substances and that the agency "acknowledges uncertainty regarding health effects at low doses" and supports more research on that.

The radiation regulation is supported by Steven Milloy, a Trump transition team member for the EPA who is known for challenging widely accepted ideas about manmade climate change and the health risks of tobacco. He has been promoting Calabrese's theory of healthy radiation on his blog.

But Jan Beyea, a physicist whose work includes research with the National Academies of Science on the 2011 Fukushima nuclear power plant accident, said the EPA proposal on radiation and other health threats represents voices "generally dismissed by the great bulk of scientists."

The EPA proposal would lead to "increases in chemical and radiation exposures in the workplace, home and outdoor environment, including the vicinity of Superfund sites," Beyea wrote.

At the level the EPA website talks about, any one person's risk of cancer from radiation exposure is perhaps 1 percent, Beyea said.

"The individual risk will likely be low, but not the cumulative social risk," Beyea said.

"If they even look at that — no, no, no," said Terrie Barrie, a resident of Craig, Colorado, and an advocate for her husband and other workers at the now-closed Rocky Flats nuclear-weapons plant, where the U.S. government is compensating certain cancer victims regardless of their history of exposure.

"There's no reason not to protect people as much as possible," said Barrie.

U.S. agencies for decades have followed a policy that there is no threshold of radiation exposure that is risk-free.

The National Council on Radiation Protection and Measurements reaffirmed that principle this year after a review of 29 public health studies on cancer rates among people exposed to low-dose radiation, via the U.S. atomic bombing of Japan in World War II, leak-prone Soviet nuclear installations, medical treatments and other sources.

Twenty of the 29 studies directly support the principle that even low-dose exposures cause a significant increase in cancer rates, said Roy Shore, chief of research at the Radiation Effects Research Foundation, a joint project of the United States and Japan. Scientists found most of the other studies were inconclusive and decided one was flawed.

None supported the theory there is some safe threshold for radiation, said Shore, who chaired the review.

If there were a threshold that it's safe to go below, "those who profess that would have to come up with some data," Shore said in an interview.

"Certainly the evidence did not point that way," he said.

The U.S. Food and Drug Administration, which regulates electronic devices that emit radiation, advises, broadly, that a single CT scan with a dose of 10 millisieverts may increase risks of a fatal cancer by about 1 chance in 2,000.

The EPA tucked its proposed relaxation of radiation guidelines into its "transparency in science" proposal in April. The proposal would require regulators to consider "various threshold models across the exposure range" when it comes to dangerous substances.

While the EPA rule change doesn't specify that it's addressing radiation and chemicals, the EPA's official press release announcing the change does.

Supporters of the proposal say it's time to rethink radiation regulation.

"Right now we spend an enormous effort trying to minimize low doses" at nuclear power plants, for example, said Brant Ulsh, a physicist with the California-based consulting firm M.H. Chew and Associates. "Instead, let's spend the resources on minimizing the effect of a really big event."

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 9/25/2018 1:20:27 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]
Subject: Fwd: New IQG Case: RFC 18003 - NATA/Ethylene Oxide
Attachments: RFC 18003 Request.pdf; ATT00001.htm

FYI - OAR received an information quality guideline request for correction related to characterization of ethylene oxide risk in NATA. Will send draft fact sheet with ORD input highlighted separately.

Begin forwarded message:

From: "Shoaff, John" <Shoaff.John@epa.gov>
To: "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>, "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>
Cc: "Lewis, Josh" <Lewis.Josh@epa.gov>
Subject: FW: New IQG Case: RFC 18003 - NATA/Ethylene Oxide

Bill et al,

Thought you might want to be aware of this new IQG case, see attached. Our QA poc, Tom Eagles, just received it from OEI and will likely touch base with Kelly R. in OAQPS for awareness and need for SME with request. Thx.

John

JOHN SHOAFF | DIRECTOR
OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-B
1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA
Shoaff.john@epa.gov | **1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE**

From: Kirby, Kevin
Sent: Monday, September 24, 2018 10:05 AM
To: Eagles, Tom <Eagles.Tom@epa.gov>
Subject: New IQG Case: RFC 18003 - NATA/Ethylene Oxide

Good Morning Tom,
We just received a new RFC challenge dealing with the NATA framing of EO.
Could you please help me discern the SMEs for this so that I can get a Scoping Team meeting scheduled ASAP.
As you know, we stretch to get the response out within 90 days.
Thanks,
Kevin

Kevin J. Kirby
Enterprise Data Architect
US Environmental Protection Agency

OEI/OEIP/EQMD
202 566-1656 desk

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 5/11/2018 4:50:11 PM
To: Harlow, David [harlow.david@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
CC: Dominguez, Alexander [dominguez.alexander@epa.gov]; Baptist, Erik [baptist.erik@epa.gov]
Subject: RE: TPS Help by 12:50 pm
Attachments: EF ANPRM TPS_DRAFT 2018 05 10 cw.docx

Not sure I follow the first few bullets, but I added in a few more that might be helpful for messaging/massaging.

From: Harlow, David
Sent: Friday, May 11, 2018 12:17 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>; Baptist, Erik <Baptist.Erik@epa.gov>
Subject: RE: TPS Help by 12:50 pm

Mandy,

I'll double back on this now. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Should be able to do it by 12:50 p.m.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Gunasekara, Mandy
Sent: Friday, May 11, 2018 12:01 PM
To: Harlow, David <harlow.david@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: TPS Help by 12:50 pm

Deliberative Process / Ex. 5

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Academic Contacts

First Name	Last Name	Email Address
Jerome	Arnett	Personal Email / Ex. 6
Ron	Bailey	
Dallas	Baker	
Keith	Belton	
Richard	Belzer	
Alex	Berezow	
Daniel	Botkin	
William	Briggs	
Dan	Byers	
Edward	Calabrese	
Mark	Campbell	
Oren	Cass	
Bruce	Copley	
Tony	Cox	
Judith	Curry	

Background	Occupation	Column1
M.D.		
	Correspondent, Reason	
MBA, Mississippi College	Director of Environmental Services, Neel-Schaffer	
Ph.D., (public policy) George Washington University	Director, Manufacturing Policy Initiative	
Ph.D., Harvard University	President, Regulatory Checkbook; Independent Consulting in Regulatory Policy, Economics, and Risk Analysis	
Ph.D., (microbiology) University of Washington	American Council of Science & Health	
Ph.D., (plant ecology) Rutgers University	Professor Emeritus in the Department of Ecology, Evolution, and Marine Biology at the University of California, Santa Barbara	
Ph.D., (statistics) Cornell University	Policy Advisor, Heartland Institute	
M.S., (soil science) North Carolina State University	Senior Policy Director, U.S. Chamber og Commerce;s Global Energy Institute	
Ph.D. (physiology.toxicology), University of Massachusetts at Amherst, MA	Professor, University of Massachusetts at Amherst, MA	
Ph.D., Johns Hopkins University	Professor, U.S. Naval Academy	
J.D., Harvard Law School	Senior Fellow, Manhattan Institute	
	ExxonMobil Biomedical Sciences	
Ph.D., (risk analysis) Massachusetts Institute of Technology	President, Cox Associates; Editor, Risk Analysis; Chair, CASAC	
Ph.D., (geophysical sciences) University of Chicago	President, Climate Forecast Applications Network	

Susan	Dudley
Don	Easterbrook
Peter	Felker
Barb	Glenn
Teresa	Gorman
Laurence	Gould
John	Graham
William	Happer
Michael	Honeycutt
Walt	Hufford
Jason	Johnston
Richard	Lindzen
Fred	Lipfert
Randall	Lutter
Matthew	Malkan
Gary	Marchant

Personal Email / Ex. 6

M.S. Massachusetts Institute of Technology	Director, GW Regulatory Studies Center & Distinguished Professor of Practice Trachtenberg School of Public Policy & Public Administration
Ph.D	Professor Emeritus of Geology at Western Washington University.
Ph.D. (chemical physics), California Institute of Technology	Professor, University of California, Los Angeles
Ph.D., (ruminant nutrition) University of Kentucky	CEO, NASDA
Ph.D., (physics) Temple University	Professor, University of Hartdford
Ph.D., (urban and public affairs) Carnegie-Mellon University	Dean, Indiana University School of Public and Environmental Affairs
Ph.D., (physics) Princeton University	Professor Emeritus, Princeton University
	Director, Toxicology Division, TCEQ
	Director of Government and Regulatory Affairs, Repsol USA
Ph.D (economics), University of Michigan	Professor, University of Virginia School of Law
Ph.D., (applied mathematics) Harvard university	Professor Emeritus, Massachusetts Institute of Technology
	Environmental Consultant
Ph.D. (economics), Cornell University	Professor of Public Policy, University of Virginia
Ph.D (astronomy), Caltech	Professor, University of California, Los Angeles
Phd, genetics	director of the Center for Law, Science and Innovation

Roger	McClellan
Mike	McKenna
Henry	Miller
Alan	Moghissi
Suresh	Moolgavkar
Kevin	Neyland
Steve	Packham
Roger	Stough
Stanley	Trimble
Richard	Trzupek
Kirby	Tyndall
George	Wolff
S. Stanley	Young
David	Zorn
Benjamin	Zycher

Personal Email / Ex. 6

DVM, Washington State University	Advisor, Inhalation Toxicology & Human Health Risk Analysis
MPA., George Mason University	President, MWR Strategies
M.D., University of California, San Diego	Fellow, Hoover Institution at Standford university
Ph.D., (physical chemistry) Karlsruhe Institute of Technology	Associate Director of International Center for Regulatory Science at George Mason University
Ph.D., (mathematics) Johns Hopkins University	Senior Fellow & Principal Scientist, Exponent
Ph.D., (medical psychology) University of Oregon medical School	Toxicologist, Utah Department of Environmental Quality
Ph.D., (geography and environmental engineering) Johns Hopkins University	Professor, George Mason University
Ph.D. (population and settlement geography), University of Georgia	Professor Emeritus, University of California, Los Angeles
	Principal Consultant, Trinity Consultants
Ph.D	Senior Consulting Toxicologist, Pastor Behling & Wheeler
Ph.D., (environmental sciences) Rutgers University	Principal Scientist, Air Improvement Resource, Inc.
Ph.D., (statistics and genetics), North Carolina State University	Fellow, American Statistical Association and the American Association for the Advancement of Science
Ph.D. (economics), George Mason University	Adjunct Professor, George Mason University
Ph.D. (economics), University of California, Los Angeles	Senior Fellow, Pacific Research Institute; President of Benjamin Zycher Economics Associates; Resident Scholar. American Enterprise Institute

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 5/10/2018 2:58:01 PM
To: Lewis, Josh [Lewis.Josh@epa.gov]
Subject: FW: QFR's
Attachments: 2018.04.19 - FINAL - Administrator Pruitt QFRs EPW 01.30.2018.docx

Importance: High

Josh,

Any chance we could get some quick updated language RE: the March 27 memo on interstate transport? I will have time after noon to help.

Also, how did these not go out yet???

Thanks!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Palich, Christian
Sent: Thursday, May 10, 2018 9:23 AM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Frye, Tony (Robert) <frye.robert@epa.gov>
Subject: QFR's
Importance: High

Sorry for the urgency on this Clint. But I am trying to get these QFR's to the hill asap. Can you look at question 1 on attached Administrators QFR's. I think this question needs updated based on recent events like last week and today, agree?

If so can you get a quick re write of the question with the latest? Thanks!

Christian R. Palich
Deputy Associate Administrator
Office of Congressional & Intergovernmental Affairs
U.S Environmental Protection Agency
O: 202.564.4944
C: 202.306.4656
E: Palich.Christian@epa.gov

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/17/2018 11:53:41 AM
To: Woods, Clint [woods.clint@epa.gov]
Attachments: BPC Science Report fnl.pdf; ATT00001.txt

http://bipartisanpolicy.org/wp-content/uploads/sites/default/files/BPC%20Science%20Report%20fnl.pdf

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/17/2018 11:51:39 AM
To: Woods, Clint [woods.clint@epa.gov]
Attachments: ehp.1204942_508.pdf; ATT00001.txt

https://ehp.niehs.nih.gov/pdf-files/2013/Feb/ehp.1204942_508.pdf

Data Disclosure for Chemical Evaluations

Randall Lutter,[1] Craig Barrow,[2] Christopher J. Borgert,[3] James W. Conrad Jr.,[4] Debra Edwards,[5] and Allan Felsot[6]

[1]Independent Consultant, Bethesda, Maryland, USA; [2]Craig Barrow Consulting, Gibsonia, Pennsylvania, USA; [3]Applied Pharmacology and Toxicology Inc., Gainesville, Florida, USA; [4]Conrad Law & Policy Counsel, Washington, DC, USA; [5]Independent Consultant, Alexandria, Virginia, USA; [6]Food and Environmental Quality Lab, Washington State University, Richland, Washington, USA

Background: Public disclosure of scientific data used by the government to make regulatory decisions for chemicals is a practical step that can enhance public confidence in the scientific basis of such decisions.

Objectives: We reviewed the U.S. Environmental Protection Agency's (EPA) current practices regarding disclosure of data underlying regulatory and policy decisions involving chemicals, including pesticides. We sought to identify additional opportunities for the U.S. EPA to disclose data and, more generally, to promote broad access to data it uses, regardless of origin.

Discussion: We recommend that when the U.S. EPA proposes a regulatory determination or other policy decision that relies on scientific research, it should provide sufficient underlying raw data and information about methods to enable reanalysis and attempts to independently reproduce the work, including the sensitivity of results to alternative analyses. This recommendation applies regardless of who conducted the work. If the U.S. EPA is unable to provide such transparency, it should state whether it had full access to all underlying data and methods. A timely version of submitted data cleared of information about confidential business matters and personal privacy should fully meet the standards of transparency described below, including public access sufficient for others to undertake an independent reanalysis.

Conclusion: Reliable chemical evaluation is essential for protecting public health and the environment and for ensuring availability of useful chemicals under appropriate conditions. Permitting qualified researchers to endeavor to independently reproduce the analyses used in regulatory determinations of pesticides and other chemicals would increase confidence in the scientific basis of such determinations.

Key words: chemicals, data disclosure, information quality, pesticides. *Environ Health Perspect* 121:145–148 (2013). http://dx.doi.org/10.1289/ehp.1204942 [Online 11 December 2012]

The evaluation of chemicals is an important topic of public interest. Against this backdrop, CropLife America (Washington, DC), an association of agricultural pesticide manufacturers, sponsored a meeting of experts from a variety of backgrounds to address how to judge the quality of scientific work in chemical evaluation and, if possible, to seek consensus or agreement. Here we present a proposal from some of those experts addressing a more specific topic: disclosure of and access to data underlying regulatory determinations concerning pesticides and other chemicals.

It is axiomatic that scientific work used in regulatory determinations should be of high quality [e.g., Information Quality Act (IQA) 2000]. Greater public disclosure of data and methods is a practical step toward ensuring that scientific work used in regulatory determinations meets this standard for quality. Greater disclosure should reduce bias because it makes masking of bias more difficult. In addition, the reliability of scientific work used in regulatory evaluations of chemicals is likely to improve if greater disclosure leads to increased evaluation of data quality and that evaluation then leads to improved designs and generally higher-quality studies. Furthermore, access to the underlying raw data and methodology may be required for the public to provide more informed comments to regulatory agencies that will rely on the study (Portland Cement Association *v.* Ruckelshaus 1973). Ultimately, the reliability of scientific work can be judged definitively only if researchers have disclosed sufficient data and information about methods and results to permit others to evaluate data quality and to try to reproduce or replicate key findings, including the sensitivity of results to alternative analyses.

This does not mean that independent replicability is by itself a standard sufficient for quality. Replicability by independent entities is one of the three generally accepted tenets of valid regulatory science. The other two tenets are that the identity and authenticity of scientific measurements be verifiable within a defined range of precision, and that measurements and observations not be confounded by extraneous factors known to corrupt their accuracy and precision (Borgert et al. 2011; Gori 2009a, 2009b). The heads of the National Institute of Environmental and Health Sciences and the Agency for Toxic Substances and Disease Registry have endorsed these tenets in testimony (Birnbaum and Falk 2010). Henry and Conrad (2008) discussed a variety of other standards and practices (e.g., peer review) that can be used as indications of quality. Although disclosure by itself may not be sufficient to ensure quality, it is necessary.

The IQA requires the U.S. Office of Management and Budget (OMB) and agencies such as the U.S. Environmental Protection Agency (EPA) to issue guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by federal agencies. The OMB's guidelines under the IQA embrace a disclosure principle, stating that when agencies disseminate "influential scientific, financial, or statistical information," they "shall include a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties" (OMB 2002). The OMB guidelines explain that the standard they use, "capable of being substantially reproduced," is less stringent than a "confirmation" standard because it simply requires that an agency's analysis be sufficiently transparent that another qualified party could replicate it through reanalysis. The U.S. EPA has its own information quality guidelines, which are consistent with those of the OMB (U.S. EPA 2002). Although one federal district court found that the IQA "does not create a legal right to access to information" (Salt Institute *v.* Leavitt 2006), two more recent federal appeal courts left open the possibility of judicial review of agency actions measured against IQA requirements

Address correspondence to R. Lutter, 5024 Newport Ave., Bethesda, MD 20816 USA. Telephone: (240) 271-8430. E-mail: rwlutter@gmail.com

This commentary is based in part on discussions that occurred during a meeting convened by CropLife America on 13 May 2011, in Washington, DC. Participants in the meeting included the authors of this work and the following experts, whose helpful comments we gratefully acknowledge: V. Dellarco (U.S. Environmental Protection Agency), D. Epstein (U.S. Department of Agriculture), M. Fry (American Bird Conservancy), G. Gray (George Washington University), S. Krimsky (Tufts University), J. McFarland (Syngenta Crop Protection Inc.), J. Sass (Natural Resources Defense Council), and J. Schroeder (New Mexico State University).

The views expressed in this document are entirely those of the authors and not necessarily those of any organization(s) with which any author is affiliated.

R.L., an independent consultant, consults for CropLife America (CLA) and received financial support from the CLA to moderate a forum and serve as principal author of this paper. C.B. consults for Dow AgroSciences LLC, an R&D-based agrochemical producer, registrant, and marketer. C.J.B. received CLA funding to review and analyze scientific literature on data quality. J.W.C. has previously received funding from the American Chemistry Council to author work on the quality of scientific research evaluating chemicals. D.E. consults for a variety of pesticide manufacturers and for the CLA. A.F. has consulted with nonprofit organizations funded by the CLA about pesticide issues.

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(Americans for Safe Access *v.* U.S. Department of Health and Human Services 2010; Prime Time International Co. *v.* Vilsack 2010). Thus, the IQA at a minimum provides support for the disclosure concepts discussed here and may provide opportunities for enforcing such disclosure.

Legislation commonly known as the "Shelby Amendment" (Treasury and General Government Appropriations Act 1998) led the OMB to revise its Circular A-110 so that, in response to a Freedom of Information Act (FOIA 1966) request, federal agencies must release research data relating to published research findings produced under an award (e.g., federal grant or contract) that were considered by the agency in developing action that has the force and effect of law (American Association for the Advancement of Science 2005; OMB 1999). Much of the research that the U.S. EPA relies on in making decisions regarding regulated chemicals, particularly pesticides, is not federally funded, although published studies cited in the U.S. EPA's Integrated Risk Information System (IRIS) often received federal funding.

In describing implementation of the Shelby Amendment, Conrad and Becker (2011) stated that

> [i]t seems only fair for privately-funded work to be subject to the same disclosure requirement, at least when the persons conducting or funding it submit it to an agency.

Similarly, in their report *Improving the Use of Science in Regulatory Policy*, the Bipartisan Policy Center (2009) recommended that

> Studies used in the formulation of regulation should be subject to data access requirements equivalent to those under the Shelby Amendment and its implementing Circular regardless of who funded the study.

Several prominent journals have adopted data disclosure policies intended to facilitate replication. *Nature*'s policy (Nature Publishing Group 2012) states:

> An inherent principle of publication is that others should be able to replicate and build upon the authors' published claims. Therefore, a condition of publication in a *Nature* journal is that authors are required to make materials, data and associated protocols promptly available to readers without undue qualifications.

Similarly, the policy of the *Proceedings of the National Academy of Sciences* (PNAS 2012) states: "To allow others to replicate and build on work published in *PNAS*, authors must make materials, data, and associated protocols available to readers." *Science* has similar policies (Science 2012) and recently published a special section on the importance and challenges of data replication and reproducibility in different fields (Jasny et al. 2011).

Our recommendations are consistent with the Shelby Amendment, recommendations of the Bipartisan Policy Center, and the practices of prominent journals, as well as the recommendations of Conrad and Becker. Our goal is to promote the broadest possible access to data used by the U.S. EPA, regardless of who prepared or compiled the data.

Discussion

The U.S. EPA already has access to considerable data underlying studies submitted by pesticide registrants that it uses in regulatory decisions regarding pesticides. For example, if a regulated entity submits to the U.S. EPA a Good Laboratory Practice (GLP) study (Good Laboratory Practice Standards 1989) required for a pesticide registration, it must retain all "raw" data to comply with GLP requirements (e.g., 40 CFR 160.190 and 40 CFR 160.195; U.S. EPA 1989). The U.S. EPA has access to such data because, for the purpose of supporting a pesticide registration, it may refuse to consider reliable any data from a study that is not conducted in accordance with those GLP rules (40 CFR 160.17). On the other hand, a U.S. EPA request for data used in a peer-reviewed or "gray literature" study may be fulfilled completely, partially, or not at all.

We recommend that when the U.S. EPA proposes a regulatory determination or other policy decision for pesticides or other chemicals that relies on scientific research, it should provide sufficient disclosure of data and information about methods to enable reanalysis and attempts at independent replication of the work, including the sensitivity of results to alternative analyses. This recommendation applies whether the decision is a discrete compound-specific decision, such as setting an uncertainty factor or determining a benchmark dose, or a programmatic policy decision, such as adoption of a particular study design or method for particular types of testing. Such disclosure should include all raw data—that is, data as originally collected in accordance with research protocols, the research protocols themselves, and all methods (including computer programs used for statistical modeling). Thus it would extend from the supporting science (e.g., animal toxicity studies used to calculate cancer slope factors) to risk assessments (i.e., analytic work that takes as given the results of toxicological and epidemiological work and integrates them into an assessment of risk). The recommended disclosure would be sufficiently detailed to include recorded ages and sex of test animals, all laboratory results, and all recorded observations about health and clinical conditions, with all disclosed data recorded according to research protocols. Disclosure should be sufficient to provide for a full understanding of the operation of any proprietary models used in supporting studies.

Further, this recommendation applies regardless of who conducted the work (e.g., researchers with industry, government, or academic institutions). In instances where the U.S. EPA is unable to provide such a level of transparency because of lack of access or legal restrictions on disclosure, it should state the degree of access it had to such data. Finally, if the U.S. EPA did not enjoy full access, it should offer a cogent explanation of why it decided to make regulatory or policy decisions using results of analyses that lacked the ideal level of transparency and how, specifically, it weighed such results relative to other evidence.

The U.S. EPA has taken some constructive steps in this direction. Its Office of Pesticide Programs issued *Evaluation Guidelines for Ecological Toxicity Data in the Open Literature* (U.S. EPA 2011) that partially implements the ideas discussed here. In particular, the guidelines (U.S. EPA 2011) acknowledge that the "most reliable means of determining whether study conclusions can be verified is through access to the raw data" and state that

> [w]here raw data are not available to verify the study endpoints, the reviewer must discuss the uncertainties associated with quantitative use of the data relative to studies where raw data are provided.

Finally, the U.S. EPA (2011) advised analysts that

> [d]epending on the importance of the open literature study to the risk assessment conclusions, attempts should be made to obtain missing information from the study, including the raw data, if possible.

Although these steps represent improvements in access to and disclosure of underlying data, they fall short of our recommendations. First, they do not apply generally to all data used for chemical evaluation. Second, the U.S. EPA (2011) guidelines discuss access to raw data as important for verification of conclusions. However, there is no mention of replication of results, although replication (including an assessment of the robustness of results) is an essential part of ensuring validity. In addition, these U.S. EPA guidelines are silent about access to detailed information about methods (e.g., computer code). Fourth, the guidelines require an analyst to "discuss the uncertainties associated with quantitative use of the data." A better approach, adopted here, would be for the U.S. EPA to state that it will explain how, specifically, it weighed such results relative to other data. Finally, the guidelines (U.S. EPA 2011) limit instructions to obtain raw data "depending on the importance of the open literature study," and appear focused on "missing information" instead of declaring that all raw data underlying studies used in quantitative regulatory determinations should be generally available to the U.S. EPA and the public.

ED_002664_00027507-00002

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Our recommendation does not mean that the U.S. EPA should require that all disseminated data be subjected to a reproducibility requirement. As explained in the OMB information quality guidelines (OMB 2002), constraints related to ethics, feasibility, or confidentiality may preclude disclosure or a replication exercise (i.e., a new experiment, test, or sample) prior to each dissemination. Instead, we recommend that the U.S. EPA generally provide sufficient transparency about data and methods that a qualified member of the public could undertake an independent reanalysis. These standards for transparency should apply to agency analyses of data from a single study as well as to analyses that combine information from multiple studies.

Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA 1972) provides for public access to safety and efficacy information (U.S. EPA 2010). There are two types of exceptions, which are important to respect and which have been implemented without undermining the objectives of disclosure discussed here. First, certain information that is generally not related to assessing risks or making regulatory determinations is excluded from disclosure as confidential business information. By law, the U.S. EPA may not make public information that discloses *a*) manufacturing or quality control processes, *b*) methods for testing and measuring the quantity of deliberately added inert ingredients, and *c*) the identity or percentage quantity of deliberately added inert ingredients (FIFRA 1972). [We note that on 23 December 2009 the U.S. EPA issued an advance notice of proposed rule making to increase the public availability of information regarding the identity of the inert ingredients of pesticide products (U.S. EPA 2009).]

Second, FIFRA protects the proprietary interests of the pesticide manufacturers that first made the investments necessary to produce the data by requiring the U.S. EPA to ensure that the release of data does not unfairly benefit the competitors of those companies (FIFRA 1972). To accomplish this, the U.S. EPA must obtain—before disclosure of such data—affirmations from recipients that they will not give the data to multinational business interests that might seek to register in other countries the pesticide products that are the subject of the testing (U.S. EPA 2012a). In addition, the agency must keep lists of the people who obtain such data and who they represent.

The U.S. EPA currently reviews and redacts data before a version cleared of confidential business information (CBI) can be made public. This process currently requires the public to file a formal request under FOIA for each study for which it wants undisclosed information. The U.S. EPA reported to Congress in 2010 that it has "completely redesigned its electronic FOIA reading room to make tens of thousands of highly sought after pesticide science and regulatory records publicly available without the filing of a FOIA request" (Gottesman 2010). To further advance such reforms, we suggest that the U.S. EPA convene a diverse stakeholder group (e.g., through its Pesticide Program Dialogue Committee; U.S. EPA 2012b) to solicit specific ideas about ways to streamline the current process to facilitate timely disclosure of data consistent with legal protections under FIFRA and FOIA. A timely CBI-cleared version of industry-submitted data should fully meet the standards of transparency described here, including public access to enough data and details of the study design that others could undertake an independent replication effort.

The timing of data disclosure matters. The U.S. EPA should make publicly available data underlying a regulatory determination or other policy decisions for pesticides by the beginning of the applicable public comment period to provide interested members of the public a meaningful opportunity for review before commenting on the proposal. Disclosure would generally occur after publication of academic articles. An exception would occur if the publication process was unavoidably so lengthy that the study was forthcoming rather than published when used by the regulator in a proposed regulatory or policy decision. If the agency uses data submitted by a manufacturer that are protected from release by federal law, the regulatory agency should provide information on the data and methods generally in a manner that facilitates efforts at independent analysis by qualified members of the public.

Conclusion

Evaluating chemicals within a science-based framework is essential to protecting public health and the environment and ensuring availability of useful chemicals under appropriate terms and conditions. Public access to data and methodologies used in regulatory determinations is equally essential to maintaining public trust in regulators' decisions. The principles and recommendations we describe here regarding data access will help achieve these goals by permitting qualified researchers to endeavor to replicate analytic results independently.

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FOIA (Freedom of Information Act). 1996. 5 USC 552.

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Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/17/2018 11:50:29 AM
To: Woods, Clint [woods.clint@epa.gov]
Attachments: Science in Regulation_Final Report_2_18_13_0.pdf; ATT00001.txt

https://www.acus.gov/sites/default/files/documents/Science%20in%20Regulation_Final%20Report_2_18_13_0.pdf

SCIENCE IN REGULATION: A STUDY OF AGENCY DECISIONMAKING APPROACHES

Wendy Wagner
University of Texas School of Law

Feb. 18, 2013

This report was prepared for the consideration of the Administrative Conference of the United States. The views expressed are those of the author and do not necessarily reflect those of the members of the Conference or its committees.

Science in Regulation: A Study of Agency Decisionmaking Approaches

Wendy Wagner, University of Texas School of Law*

Final Draft: February 18, 2013

Executive Summary

This Executive summary sets out the focus of the study, the methods used, the general findings, and outlines recommendations.

Purpose and Focus of the Study

For the last three decades, federal agencies have been criticized for not being clear about the role that science played in their decision-making processes. In response to these criticisms, a number of efforts have been made by the Executive Branch and Congress to provide mechanisms that attempt to shore up the quality of the scientific process undergirding agency decision-making. Most recently, in 2009 President Obama issued a memorandum to the agencies directing that "To the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking." At base, these initiatives demand heightened transparency of the agencies' use of science, a demand that is central to ensuring the basic accountability of agency regulation.

This study examines the basic decision-making processes employed by agencies in science-intensive regulatory projects. Illuminating basic agency decision processes helps provide greater transparency about the agencies' use of science since these processes reveal the points at which agencies look to external peer reviewers, the public, and other entities for critical feedback and advice. The elucidation of agency decision-making processes – essentially re-creating the agencies' underlying flow charts for how they integrate science into regulation -- also provides information on how the agencies assemble and assess the available technical evidence relevant to a decision, how the agencies integrate that evidence into a larger policy decision, and how they explain their work to the larger public and scientific community. Indeed, precisely because the line between science and policy is blurred, it is critically important that the underlying decision-processes themselves be both analytically robust and transparent. It is no coincidence, in fact, that many of the worst examples of politicized science have occurred in settings where agency decision processes lacked both transparency and rigor.

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Methods

This study of the agency's integration of science into regulation examines the processes used by three agencies (namely the Environmental Protection Agency, the Fish and Wildlife Service, and the Nuclear Regulatory Commission) in five different regulatory programs. Some of these regulatory programs are regarded as exemplary while others are viewed as problematic; the diversity in the programs thus offers a rich basis for understanding how agencies integrate science into their decision-making processes. Moreover, while the programs reviewed in this study are not comprehensive and do not cover the full spectrum of possible agency approaches, the breadth of programs reviewed is sufficiently broad to offer a preliminary glimpse of some of the various challenges and creative adjustments that agencies have made in their integration of science into regulation.

Findings

The study concludes that the agencies have made considerable strides in ensuring the rigor and transparency of their integration of science into regulation. For example, some agencies explain how policy and science intersect in their regulatory projects in sophisticated, yet accessible ways. Likewise, some agencies have established processes that ensure both expert and internal review of their work, and, in connection with these processes, are providing a public record of the changes they make in response to peer review and public comment. Some agencies have also established integrity policies that allow their staff to raise scientific differences with supervisors through various informal and formal mechanisms. Finally, a number of agencies increasingly use the Internet to post the reference list used in their decision-making and even to make copies of documents consulted during that process readily available through databases and hyperlinks.

In addition to identifying these positive practices, a series of recommendations are developed for four separate areas of agency processes. First, the study recommends that innovative practices for incorporating science into the regulatory process be shared and that best practices be established. The study finds that while some agencies are innovative in their use of science, little of this innovation is recorded or shared with other agencies. In addition to recommending that information about innovative practices be systematically collated and disseminated, the report also identifies a number of "best practices" for integrating science into regulation as well as a number of other innovative approaches that deserve further study and experimentation. In identifying these best practices, the report also underscores that because there is such a wide variation in regulatory projects, a one-size fits-all approach to the integration of science in regulation is ill-advised.

Second, the study exposes a number of external constraints on agency decision-making processes that limit the ability of the agencies to improve their decision processes in keeping with the President's scientific integrity initiative. A second set of recommendations suggests that these various external constraints should be tracked more vigorously to identify their impact on agency science-intensive projects and ultimately reformed, if needed.

Third, because agencies necessarily must rely on scientific research produced by regulated parties to support in a number of health and environmental program, the study recommends that this privately produced research be subjected to the same types of requirements imposed on research published in scientific journals and on research produced with federal monies. At present this research is not subject to a vigorous oversight processes.

Finally, the investigation highlights the need for additional study of regulatory science in the future. The agencies' use of external peer reviewers, for example, is vital to ensuring that the agencies' integration of science into policy is both rigorous and transparent, yet very little is understood about this feature of agency decision-making. Indeed, just in this study alone, external peer reviewers were employed by the agencies in very different roles (e.g., collaborative and iterative versus providing a one-shot technical evaluation of a decision), were utilized at different points in the decision-making (e.g., early, continuous, or at the end), and in different ways (e.g., individual reviewers versus panels). Without some appreciation of the breadth or variety of the use of external exert reviewers, it is difficult to identify the most effective process moving forward. The agencies' variable use of external peer reviewers as well as other topics are recommended for future study in the final section of the report.

Specific Recommendations

Specific recommendations emerging from the research in the report are provided below.

I. Capitalizing on Agency Successes

A. Sharing Information

1. Agencies should provide the public with an accessible description of the process that they utilize for integrating science into their decisions for each of their science-intensive programs. This includes a statement of how an agency evaluates the scientific information used in its analysis; how the agency makes that information available to reviewers and the public; how the analysis is reviewed by experts and interested parties; and how the agency ensures that the final decision can be compared against the scientific record.

2. OSTP, a standing NAS Committee, or some other body should take responsibility for identifying and publicizing the innovations developed by agencies for transparently incorporating science into their regulatory decisions.

B. Best Practices

3. In supporting its science-based regulatory decision, an agency should identify and make publicly available a list of the scientific literature it consulted, including even the literature it rejected when it is material to the scientific analysis, as well as the literature it relied upon. This reference list should be posted online whenever possible.

   When an agency relies on studies that are not published, it should post the studies on its website as soon as is practicable, subject to copyright and other legal restrictions. When this public transparency is not possible, these restrictions should be explained in the agency's individual analyses and possibly more generally in describing its regulatory program for the public.

4. Consistent with President Obama's directive, agencies should be encouraged, not impeded, from having their scientific analyses reviewed by other experts, even if this oversight occurs wholly inside the agency. Any limitations on an agency's ability to have scientific work reviewed by scientific experts should be actively discouraged. Additionally and when possible, agencies should endeavor to explain how they ensured the rigorous review of their scientific products for each regulatory project.

5. Agencies should resist applying deliberative process protections to documents and communications that influenced the development of science-based regulatory projects. To the extent agencies do invoke the deliberative process privilege, they should justify so doing with respect to each document that is withheld from the public. Draft science-policy analyses, such as draft papers, can be made public with the disclaimer that they do not necessarily represent the policy or scientific position of the agency. Agencies should prepare an administrative record that advances this transparency goal by ensuring that the documents, meetings, and other deliberations that resulted in potentially significant changes to scientific assumptions or interpretations are made part of the administrative record. These administrative records should be posted on the internet when possible.

C. Innovations that Should be Considered by Agencies but that are Currently too Novel to be regarded as Best Practices

6. All significant science-policy choices made by an agency in reaching a decision should be identified and explained in clear and understandable terms. In order to provide this heightened level of transparency, agencies should consider following an analytical process that: a) identifies the policy-relevant questions that can be informed by science; b) identifies in advance a study design, such as criteria for weighting individual studies, as well as identifying other a priori analytical choices, like stopping rules; c) provides a synthesis of the available evidence and relevant literature guided by this study design; and d) identify other significant assumptions, choices of analytical techniques, and remaining uncertainties and how different plausible choices might change the resulting policy decision. If possible, the agency should also follow the model of the NAAQS policy assessment in bridging science and policy in a final report, although this final step will likely involve more effort and experimentation.

   Making these analytical steps explicit may not be practicable in some science-policy decisions and may not be practicable in other regulatory settings. This recommendation simply encourages agencies to consider this staged approach in their processes. Ultimately, with experience, this analytical approach may develop into a best practice. Until then, agencies are strongly encouraged to consider this analytical approach in conducting their work.

7. In regulatory settings, particularly in cases when agencies are not bound by judicially enforceable deadlines, the agencies should be encouraged to establish explicit stopping rules on regulatory projects, both with regard to when they will close their consideration of emerging research and when they chose to close currently unresolvable scientific debate in order to reach a decision. External peer review bodies may be particularly useful to agencies in establishing scientifically credible points at which debate should cease.

8. For science-intensive rules, an agency should identify specific types of future research projects that will advance understanding on the regulatory issue. This identification of research questions and priorities should influence the agency's research agenda as well as provide a benchmark for measuring regulatory progress. While agencies may need to experiment with when and how they incorporate "research checkpoints" into their regulatory analysis, the most fruitful time may occur at the point the record is closed, as determined by stopping rules.

9. Agency staff plays an important role in producing the agency's analyses. When practicable and appropriate, agency managers should consider providing staff

with some form of consensual authorship right or attribution for reports or analyses to which they contribute in a significant way. All staff authors who contributed in a significant way to a technical or scientific report should be acknowledged, including economists, lawyers, and other nonscientists. In a similar vein, reviewers and other contributors should also be identified by name and general contribution.

10. Agencies should encourage vigorous debate among agency scientists that may include developing written policies that allow agency staff to dissent or express their non-concurrence on a technical analysis to which they contributed. In cases where written dissents are permitted, agency managers should take seriously a staff member's request to place a dissent or non-concurrence into the public record. Dissenting employees should also be allowed and encouraged to publish these dissenting positions in the peer reviewed literature, provided that confidential governmental deliberations are not compromised. In all cases and regardless of the public availability of these discussions, dissenting staff members should be protected from reprisals.

II. External Constraints and Influences on Science-Based Regulation

A. External Constraints

11. There are statutory and regulatory constraints that limit the ability of the agencies to ensure that their decisions are scientifically robust and transparent in keeping with the President's Directive. The agencies should identify these legal barriers that impede public access to the scientific information underlying agency analyses or otherwise block the agencies' development of scientifically robust decision-making processes and OSTP or other centralized agencies can take responsibility for collecting information and proposing government-wide recommendations.

B. OIRA Review

12. Under Section 2(a) and 6(a) of Executive Order 12866, the agencies are responsible for
interpreting and complying with Section 6(a). The agencies' compliance under Section 6(a) should include at the very least:

1) documentation of the major changes made at the suggestion or recommendation of OIRA at any point in the lifecycle of the regulation as required by Section 6(a)(3)(E)(iii) and 6(a)(3)(F). If there are no major changes, then the agency should provide a statement to that effect;

2) an identification of all substantive changes made between the draft submitted to OIRA for review and the action subsequently announced in

compliance with Section 6(a)(3)(F)(ii). This includes but is not limited to a red-lined version of the document undergoing OIRA review;

3) for both #1 and 2, the agencies should provide a "complete, clear, and simple" identification and explanation of each major change in "plain, understandable language" for the public. Explication of these major changes should be accessible to the public – through for example a cover memorandum --- and not buried in hundreds of pages of red-lined documents. Although the Executive Order technically requires this accessible explication of all changes (and not simply the major changes) made at the suggestion of OIRA, a disclosure of the major changes is considerably less burdensome and appears consistent with the thrust of the Executive Order;

4) a library of all significant, substantive documents exchanged between OIRA and the agency throughout the life cycle of the regulatory action to ensure that the agency is in full compliance with Section 6(a)(3)(E)(ii) and (iii).

5) centralized public access to the information specified above to ensure practical, as opposed to merely theoretical, compliance with the general requirements of Section 6(a)(3)(E) and (F). Both reginfo.gov and regulations.gov should link to or provide the public with document libraries that enable simple access to and searching of documents required under Section 6.

Agencies should apply these same requirements of Section 6(a)(3)(E), as interpreted above, to all significant science-intensive regulatory actions, including agency guidances and other standards and policies, whether or not they are published in the Federal Register, as well as to all significant, supporting studies and projects that inform science-intensive agency rules, guidances, policies and related products. The requirements should also apply to all rules that are withdrawn, whether ORIA has reviewed them or not.

C. Changes made at the Suggestion of other Agencies and White House Offices

13. The agency should disclose material changes made at the suggestion or recommendation of White House offices or other agencies, consistent with Section 6(a)(3)(E)(iii), when doing so does not impair the deliberative processes.

III. Enhancing the Transparency of Research produced by Regulated Parties

14. Agencies should require conflict disclosures on all future research submitted to inform an agency's licensing, regulatory, or other decision-making process -- whether published and unpublished. This conflict of interest disclosure should be similar to the conflict of interest disclosure required by the biomedical journals. See See ICJME Standards. The regulatory conflict of interest disclosure should

also, where possible, identify whether a sponsor reserved the right to participate in the design of the research; the collection of data; the interpretation of data; the writing or disseminating the report, or any other material features of the research. Finally, "[a]gencies and scientific advisory committees should be extremely skeptical of a scientific study unless they are sure that the principal investigator(s) (as opposed to the sponsor or funder) had ultimate control over the design and publication of the study."*

15. "Studies used in the formulation of regulation should be subject to data access requirements equivalent to those under the Data Access Act (Shelby Amendment) and its implementing circular (OMB Circular A-110) regardless of who funded the study. If a study is used by an agency to inform the development of a regulation, then the same kinds of information about that study should be available upon request, regardless of whether the study was funded by the federal government, industry, or some other entity."**

16. "Confidential Business Information (CBI) claims can . . . make it difficult for the interested public to evaluate studies that contribute to regulatory policy."*** Agencies that provide CBI protections for studies or data that inform regulation should ensure that the CBI claims are justified. Given the strong incentives to regulated parties for overclaiming CBI protection and the resultant costs from this overclaiming to public health protection and research, it is important that the agencies' CBI programs not provide a safe haven for unjustified suppression of relevant regulatory research. To that end and as a first step, the agencies should review their CBI programs to ensure that there is rigorous oversight of CBI and related trade secret claims on health and environmental research. Agencies should, where possible, penalize those CBI claims that, upon review, appear unjustified.

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* Recommendation copied verbatim from BiPartisan Policy Center, Improving the Use of Science in Regulatory Policy 42 (Aug. 2009).
** *Id.* at 43.
*** *Id.*

IV. Specific Issues Recommended for Further Research

17. There are a number of topics recommended for research. They include:

- The role(s) of advisory groups and external peer reviewers
- Challenges to evaluating the reliability of data and studies submitted by applicants, particularly studies that are unpublished and/or otherwise publicly inaccessible
- The role of expert elicitation
- Agency outreach and decision-making during the pre-NPRM Stage
- The privileged role of science in regulation

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Regulatory science is often under fire, particularly when agency decisions are hotly contested. For at least the last three decades, federal agencies have been criticized in particular for not being clear about the role that science played in their decision-making process. This problem has been identified as one in need of reform by bipartisan, respected organizations like the National Academy of Sciences[1] and the Bipartisan Policy Center.[2] The agencies' failure to explain their work is one of the most common bases for remands.[3] It is also tied to more fundamental concerns about how a lack of scientific transparency in the agencies can fuel the politicization of science.[4]

It is not surprising that regulatory science presents difficult challenges for the administrative state. Evaluating the rigor of a scientific analysis requires expert training, often in the discrete area under study. It is thus difficult for agency decision processes, which depend heavily on public comment and institutional checks by nonscientific entities, to ensure that science has been used properly. The newsworthy examples within administrative practice when the scientific analyses were not conducted rigorously or, even worse, were manipulated to justify a particular result serve as a testament to the

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[1] *See, e.g.*, NATIONAL RESEARCH COUNCIL, REVIEW OF THE ENVIRONMENTAL PROTECTION AGENCY'S DRAFT IRIS ASSESSMENT OF FORMALDEHYDE (2011) [hereinafter NAS, FORMALDEHYDE REPORT]; COMMITTEE ON RISK ASSESSMENT OF HAZARDOUS AIR POLLUTANTS, NATIONAL RESEARCH COUNCIL, SCIENCE AND JUDGMENT IN RISK ASSESSMENT (1994); NATIONAL RESEARCH COUNCIL, RISK ASSESSMENT IN THE FEDERAL GOVERNMENT: MANAGING THE PROCESS (1983) [hereinafter NAS, RISK ASSESSMENT].

[2] BiPartisan Policy Center, Improving the Use of Science in Regulatory Policy 15-16, 41-42 (Aug. 2009); *see also* Advancing the Public Interest through Regulatory Reform: Recommendations for President-Elect Obama and the 111th Congress, c/o OMB Watch 26, 34, 47 (Nov. 2008).

[3] Nearly forty percent of the vacaturs of agency regulations apparently occur because the agency failed to adequately explain or document its reasoning. *See, e.g.*, Patricia M. Wald, *Judicial Review in the Time of Cholera*, 49 ADMIN. L. REV. 659, 665 (1997); *see also* Christopher H. Schroeder & Robert L. Glicksman, *Chevron, State Farm and the EPA in the Courts of Appeals in the 1990s*, 31 Environmental L. Rep. (ELI) 10371, 10405 (April 2001) (describing a decade of cases in which EPA rules were remanded for failure to support the agency's reasoning). For an early example of these opinions, see Ethyl Corp. v. EPA, 541 F.2d 1, 68 (D.C. Cir. 1976) (Bazelon, concurring) (It is not enough for an agency to prepare a record compiling all the evidence it relied upon for its action; it must also organize and digest it, so that a reviewing court is not forced to scour the four corners of the record to find that evidence for itself. . . . . In informal rule-making, the record should clearly disclose when each piece of new information is received and when and how it was made available for comment.")

[4] Shortly after taking office, for example, President Barack Obama observed that "we have watched as scientific integrity has been undermined and scientific research politicized in an effort to advance predetermined ideological agendas." President Barack Obama, Remarks at the National Academy of Sciences (Apr. 27, 2009).

possibility that existing administrative processes are not adequate to police the quality and transparency of agency science.[5] Equally serious, when a controversial decision is made that depends heavily on science, it is difficult for nonscientific participants to tell where the science leaves off and the policy choices begin. In this setting, agency officials and even the President can dodge accountability by pretending that the "science made me do it" when nothing could be further from the truth.

In response to these dual problems of using science robustly and transparently for public decisions, a number of efforts have been made by the Executive Branch and Congress to shore up the quality of the science undergirding regulatory products. Most recently, President Obama issued a memorandum to the agencies directing that "To the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking."[6] This memorandum was further elaborated by the Director of the Office of Science and Technology Policy (OSTP), John Holdren, who directed the agencies to "communicate scientific and technological findings by including a clear explication of underlying assumptions; accurate contextualization of uncertainties; and a description of the probabilities associated with both optimistic and pessimistic case projections . . . "[7].

Because occasional lapses in the transparency and rigor of the agencies' use of science have been spotlighted in the news and political process so regularly over the last three decades, however, there is reason to believe that the problems require more fundamental changes to agency processes. It is possible, for example, that at least some of these problems originate in decision-making structures that are deeply embedded in agency practice and are not easy to change with well-intended directives. It is also possible that in some cases the lack of transparency and rigor in the agencies' scientific analyses has more to do with forces outside the agencies' control. Hard constraints on agency decision-making imposed by Congress or interference with agency processes from the White House can also contribute to reduced transparency and rigor in the agencies' scientific analyses. If these outside sources are the primary causes of these recurring problems, then commanding the agencies to provide more robust analyses may be preaching to the wrong choir.[8]

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[5] *See generally* Holly Doremus, *Scientific and Political Integrity in Environmental Policy*, 86 TEX. L. REV. 1601 (2008) (describing these problems in the natural resource field); Union of Concerned Scientists, Federal Science and the Public Good (Dec. 2008); *see also infra* note365.

[6] Memorandum on Scientific Integrity from the Administration of Barack H. Obama for the Heads of Executive Departments and Agencies (Mar. 9, 2009), http://www.gpo.gov/fdsys/pkg/DCPD-200900137/pdf/DCPD-200900137.pdf.

[7] Memorandum on Scientific Integrity from John P. Holdren for the Heads of Executive Departments and Agencies (Dec. 17, 2010), at pt. V [hereinafter John Holdren Scientific Integrity Memo] available at http://www.whitehouse.gov/sites/default/files/microsites/ostp/scientific-integrity-memo-12172010.pdf .

[8] The reforms to date seem to assume that agencies need only understand they need to do a better job "showing their work" and that if problems are occurring with the agencies' scientific integrity, they are internal problems and are not caused by external forces.

This study looks behind agency work products to examine the agencies' actual decision-making processes themselves – the flow charts that show how the agency incorporates science into its regulatory products. These flow charts reveal the points at which agencies look to external peer reviewers, the public, and other entities for critical feedback and advice. The flow charts also reveal internal oversight processes that are intended to increase scientific and other sources of engagement in the agency's science-based regulatory projects.

A comparative investigation of the decision-making structures that the agencies use to incorporate science into regulatory projects helps provide purchase on this challenging topic of regulatory science in several ways. First and perhaps most important, there has been little to no attention to the decision-processes used by agencies to incorporate science, particularly at a level that goes beyond the study of a specific program. The well-known NRC and Carnegie Commission reports that provide the foundation for much of our understanding of regulatory science focused primarily on other types of challenges, such as the transparency of risk assessments.[9] Understanding the basic flow charts or processes by which agencies integrate science is thus largely unexplored territory.[10] Indeed, precisely because they are often not well described, these basic decision-making structures are particularly promising in their potential to spotlight areas of innovation and also areas that might benefit from reform.

Second, and perhaps equally important, some of the most publicized problems in agency science in recent years, ranging from the prominent Department of Interior (DOI) scandal over high level manager, Julie MacDonald's, scientific misconduct[11] to the more run-of-the-mill charges by the National Academies of Sciences (NAS) that the Environmental Protection Agency's (EPA) assessments are unduly voluminous and difficult to understand,[12] all arguably originate with problems in the agency processes. DOI's Inspector General report that documents the manipulation of science at DOI traced many of the examples of that manipulation to "enormous" gaps in guidelines governing the processes that the FWS uses to integrate science into its decision processes.[13] Even

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[9] *See, e.g.*, NRC reports cited in *supra* note 1; *see also* CARNEGIE COMMISSION, RISK AND THE ENVIRONMENT: IMPROVING REGULATORY DECISION MAKING (June 1993); CARNEGIE COMMISSION, A SCIENCE AND TECHNOLOGY AGENDA FOR THE NATION: RECOMMENDATIONS FOR THE PRESIDENT AND CONGRESS (December 1992).

[10] Unfortunately, because an exploration of the decision-making process or flow chart for integrating science into regulation has been largely ignored, there also is no readily accessible theoretical or normative framework that can serve as a foundation for this study. Instead, the basic norms of science – largely extracted from the philosophy, sociology and history of science – serve as general guideposts for assessing agency flow charts for integrating science into their decisions. *See infra* Sections III.A. and B.4.

[11] *See, e.g.*, U.S. Department of Interior Office of Inspector General, Report of Investigation: The Endangered Species Act and the Conflict between Science and Policy, Dec. 15, 2008 [hereinafter OIG MacDonald Report]; *see also infra* note 222 (providing an overview of the MacDonald scandal).

[12] *See, e.g.*, NAS, FORMALDEHYDE REPORT, *supra* note 1.

[13] *See* OIG MacDonald Report, supra note 11, at pg. 2 of cover letter. [All signals (*see, see, e.g.*, etc.) should be italicized. There are many cases where they are not. Please review all footnotes and ensure that all signals are italicized.]

more subtle problems originate from the structures that agencies use for making decisions. For example, high level EPA staff concedes that its Integrated Risk Information System (IRIS) risk assessments are lengthy and unwieldy due in part, and perhaps in large part, to the convoluted decision processes that those assessments undergo.[14] The possibility that decision-processes may be to blame for some of the continued dissatisfaction with how well agencies show their work and protect science, then, seems inescapable.

Third, a process-focus allows a legal analyst to make a useful contribution to assessing the reliability and transparency of the agencies' use of science. While legal analysts cannot identify, or at least will have a difficult time identifying agency analyses that are incomplete in their use of the scientific literature or in their explanation of alternative interpretations or assumptions, a legal analyst can trace the process by which the science enters the regulatory process.[15] This diagrammatic study not only provides a helpful basis for comparing very different types of regulatory programs, but it helps identify the role of institutional actors outside the agency, which can also influence how the agencies use science.

Finally, understanding how the science is used by the agencies is a fundamental first step in identifying ways to improve agency processes. If an agency isolates the role scientific information plays in its ultimate decision and explains how it ensured that scientific information was rigorous, then the public has a basis against which it can evaluate both the scientific and policy judgments embedded in the agency's decision. This transparency allows those outside the agency to assess whether the agency's use of science comports with the authorizing law, the larger scientific record, and political preferences. Distinguishing the role science plays in informing decisions from the role played by policy judgments is in fact central to ensuring the accountability of science-intensive regulations.[16] In addition, clearly explicating how science informed a policy decision advances other institutional and scientific goals, such as making agency decisions accessible to a broad range of stakeholders, providing a bulwark against some of the risks of the politicization of science, and identifying promising areas for future research. A clear description of how the agency used science over the course of its decision process may even provide the courts with a record that reduces the risk of judicial challenge.

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[14] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Feb. 3, 2012.

[15] *Cf.* Jamie Conrad, comments on draft ACUS Outline on Science in the Administrative Process project, Dec. 5, 2011 (raising this concern).

[16] Interestingly, although it seems well settled that transparency is fundamental to ensuring the rigorous incorporation of science into policy, there has been little effort to consider this transparency from the standpoint of the integration of science over the life cycle of a rule. Yet in some ways this chronological view of science informing the decision is more illuminating than an agency's (often post hoc) explanation of what it selected as a default juncture at various points in the process. Somewhat similarly, the role of various governmental scientists and other actors as authors in a report as largely escaped notice in the larger regulatory science literature. See Section IV.A.3. *infra*.

As discussed in more detail below, a focus on the chronology of the decisionmaking process (or flow chart) reveals that the agency that initiates a science-based rule is not the only party in control of how science is integrated. Potentially significant constraintson agencies' efforts to develop a more rigorous decision-making process for incorporating science (e.g., relying on more robust external peer review; providing more transparency in the analytical process; protecting authorship rights) can arise from outside the agencies. In several important areas of regulatory decision-making, the agencies enjoy only partial control over their decision-making processes, and their efforts to develop more robust external peer review or more transparent analyses were effectively blocked by forces outside their control. Thus, while agencies certainly can improve their processes at the margin, some of the most substantial impediments to further improvements in the rigor and transparency of the agencies' use of science must come from outside the agencies.

The study of the agencies' use of science is developed in four sections. The first section provides a brief overview of the basic challenges caused by the frequent conflation of science and policy and discusses how these challenges complicate a study of the agencies' use of science. The second section details the methods used in this study. The third, more detailed and lengthy section then presents the findings; namely the decision-making processes agencies use to integrate science in five separate regulatory settings. In the fourth and final section, these findings are analyzed and this analysis provides the basis for a series of recommendations.

I. Background: The Illusive Line between Science and Policy

Most of the clashes in the use of science for policy arise from the difficulty of determining where the science leaves off and the policymaking begins. There is no clear point of demarcation. Scientists can credibly count many of the judgments and assumptions interlaced in a computational model as "scientific judgments"; yet policymakers can also credibly argue that many of these same choices – which essentially select among plausible options – are better understood as policy judgments that fill in the many gaps that science leaves behind. The line between science and policy is so contested that the battles over it have a name in the social studies of science – "boundary work."[17] There are multiple, historical accounts, spanning back centuries, over whether scientists on the one hand or religious leaders or politicians on the other should make the important choices needed to fill the cracks in scientific evidence, models, and predictions.[18]

[17] See, e.g., Thomas F. Gieryn, *Boundary-Work and the Demarcation of Science from Non-Science: Strains and Interests in Professional Ideologies of Scientists*, 48 AM. SOC. REV. 781, 782 (1983).
[18] *Id.*

The deeply intertwined roles of science and policy in the development of regulation lie at the core of many of the clashes over the agency's use of science, but this feature also complicates efforts to study science-policy. It is difficult to assess decisions and choices that defy exclusive ties to either science or policy and thus lack a disciplinary home. Before explaining how the methods of this study have been designed to take these challenges into account, this first section offers a brief tutorial on why this line between science and policy is so difficult to pin down.

In the realm of science-policy, scientific information is available to test narrow and discrete hypotheses or collect observations, but to make the evidence useful to policy, extensive extrapolation beyond the study is generally necessary. The analyst must also choose between competing models or analytical tools in making these extrapolations, must identify basic assumptions or defaults in order to make the models run, and encounters considerable uncertainty in the resulting findings. As a result of these and other judgment-laden steps, an analyst encounters a veritable landmine of choices that need to be resolved to bridge existing evidence about, for example, the toxicity of a chemical to its potential effects on an endangered species. Since these choices are not purely scientific and since they often have considerable implications with respect to their public consequences, the choices require input from scientists, policymakers, stakeholders, and the general public.[19]

To make this abstract concept of the intermingling of science and policy more concrete, consider one of the controversies that arose in a regulatory program covered by this study.[20] Currently the U.S. Fish and Wildlife Service (FWS) and the Environmental Protection Agency (EPA) are at loggerheads on how to use the best available scientific evidence to predict the adverse impacts of individual pesticide products on endangered species. The agencies reach very different conclusions from the data about these potential adverse impacts, as illustrated in the text box below. In comparing the agencies' answers to these science-policy questions, consider their very different statutory instructions for assessing risks. The FWS is tasked with preventing the extinction of endangered species, and when a species may be adversely affected by a federal activity, the Endangered Species Act requires the FWS to use the best available evidence in a way that gives the endangered species the benefit of the doubt.[21] By contrast, in its regulatory assessment of a pesticide registration, the EPA is required to

[19] Exacerbating these challenges for the scientific analyst is ensuring that these assumptions and related are communicated successfully to the decisionmakers and other attentive (nonscientific) public. As one EPA manager noted, "with the complexity of scientific information ever increasing, limited time on the calendar for policymakers to be briefed, and 'junk science' (a buzzword to discredit scientific information, among other disparaging characterizations such as claims of bias), it is difficult for even the best communicators among scientists to effectively share what may be nuanced interpretations of available data and associated uncertainties." Email from undisclosed EPA manager, March 5, 2012.

[20] The nature of this controversy is summarized briefly in the agencies' charge to the NAS Committee examining "Ecological risk Assessment under FIFRA and ESA." This Statement of Task is available at http://dels.nas.edu/Study-In-Progress/Ecological-Risk-Assessment-Under-FIFRA/DELS-BEST-11-01.

[21] 16 U.S.C. § 1533(b).

balance the benefits of a pesticide against its costs to human health and environment.[22] This net balancing produces a much more open-ended framework that does not afford species the benefit of the doubt. Instead, the species' risks are compared against the benefits of the pesticide.

Text Box 1: Comparison of FWS vs. EPA judgments in assessing pesticide risks to endangered species (these differences are inferred from documents and interviews and are illustrative only).[23]

Questions arising in the scientific analysis	FWS's Answers	EPA's Answers
Should a study with methodological problems be excluded from the analysis? (e.g., what is the definition of "best available science"?)	Not if part of the study does not suffer from the methodological problems and the findings of that part of the study suggest risks to endangered species.	Yes. Standard exclusion criteria exclude studies that have methodological flaws that cause the studies to be unreliable.
What types of endpoints[24] should be measured?	Sub-lethal, indirect and cumulative effects on species must be considered.	Only endpoints that can be measured with some precision can be included in the analysis.
How should chemical mixtures be assessed?	The effects of chemical mixtures, as well as inactive ingredients, are critical to an assessment of risks to a species.	There is so much variation in mixtures that they cannot be included in a reliable model.
What types of assumptions should be included in the models?	Liberal spray drift[25] assumptions must be factored into an exposure model.	Reasonable spray drift assumptions should be factored into an exposure model.
How should the species' range	The species' range should be	Population models need to

[22] EPA must ensure that the pesticide does not present "unreasonable adverse effects on the environment." 7 U.S.C. § 136a(a).

[23] These differences are drawn largely from Statement of Task to the NAS Committee, *supra* note 20; from letters from EPA to NMFS regarding draft biological opinions on various pesticide decisions, see Letters at http://www.epa.gov/espp/litstatus/effects/epa-to-nmfs.pdf (page 3 and 4); http://www.epa.gov/espp/litstatus/11-18-08-nmfs-biop.pdf (page 2); and Interview with FWS Staff, Endangered Species Program, Jan. 26, 2012.

[24] An endpoint is the adverse effect that a researcher measures in a toxicity study. Mortality is one of the most straightforward endpoints. Other endpoints include various measures of neurological effects (e.g., spontaneous locomotion of a mouse in an open field), tumors (e.g., benign and malignant), reproductive and development effects (e.g., brain weights of offspring at birth), etc. The challenge in toxicology is identifying one or more endpoints for a study that can be measured reliably. Behavioral change in animals, for example, is a much more difficult endpoint to measure as compared with mortality.

[25] Spray drift refers to how far the pesticide sprays into the environment (and beyond the target) when it is applied. Spray drift is affected by a number of factors, including the contents of the pesticide product, its method of application, and wind speed.

be determined?	measured by assuming the most expansive range.	adopt reasonable assumptions and require documentation for all assumptions.
How extensively should possibilities of pesticide misuse (beyond the label) be considered?	Pesticide misuse should be factored into the model in all cases.	Pesticide misuse should not be considered unless there is evidence of that misuse.

As the table of disagreements reveals, there are important judgments at each point in the process of assessing pesticide risks to endangered species. At the first step, the agency must determine which of the existing studies inform the regulatory project and which do not. While one might imagine that generic "exclusion/inclusion" criteria could be designed to sort out the available research, even decisions about how to use the literature depends on whether the agency seeks to afford every benefit of the doubt to the species or instead simply to produce a replicable, "mean" answer to a question. Choices also arise in identifying the parameters that will be used in a model. For example, what effects should be considered in predicting adverse impacts (e.g., sub-lethal effects or easily measured mortality) and what pesticides should be included (e.g., the entire chemical mix or one pesticide at a time)? Choices arise again in determining how to account for various scenarios, such as assumptions regarding spray drift, species' range, and even the misuse of pesticides during application. All of these decisions are informed by scientific and technical judgments about plausible options, yet none is resolved by them. While the text box extracts only a handful of these choices, in science-policy work ordinarily done by agencies there are dozens, and according to one classic NAS report, often as many as fifty significant choices that can punctuate any given effort to characterize the risks of a product.[26]

No wonder, given these different statutory directions, that the two agencies' approaches to the scientific literature and related analytical steps are divergent and have been the source of continued technical disagreements and interagency strife.[27] Yet drawing out some of the disagreements – that the agencies have sent to the National Academies for guidance – also illuminates the types of embedded science-policy choices that are commonplace in the agencies' use of science. This illustration also underscores that there is clearly no one size that fits all with respect to either the questions or the answers, and thus calls for generic risk assessment guidelines may be misplaced if not mistaken.[28]

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[26] *See, e.g.*, NAS, RISK ASSESSMENT, *supra* note 1, at 29-33.
[27] *See, e.g.,* Interview with FWS Staff, Endangered Species Program, Jan. 26, 2012; Interview with EPA Staff, Office of Pesticide Programs, August 5, 2011.
[28] *But see* Nicholas Bagley & Richard L. Revesz, *Centralized Oversight of the Regulatory State*, 106 COLUMBIA L. REV. 1260, 1320-24 (2006) (recommending the centralization of risk assessment guidelines).

II. Methods

These intertwined science-policy choices help to highlight the methodological benefits of focusing on the process by which agencies make science-intensive decisions. Such a process orientation avoids the need to draw lines between "science" or "policy" and focuses the analysis instead on whether the agency's decision process, including the assumptions, framing, and integration of science and policy, is conducted in a way that helps ensure it will be both robust and transparent. Staff papers that identify and interpret the available scientific evidence, or that place that evidence into risk assessment models are not simply "science"; they involve choices made necessary by limits in information. The goal, then, is to develop a process that helps ensure the resulting analysis will state these core assumptions, uncertainties, and framing assumptions clearly and subject them to scientific and public review.

This section first describes in more detail why the decision-making process is a particularly good vehicle for assessing the scientific rigor and transparency of the agencies' use of science. The remainder of the section then outlines the more detailed methods used to examine these processes in this study.

A. Decision Processes as a Diagnostic Tool for Studying the Agencies' Use of Science

Adherence to a basic, well-established process is one of the cornerstones of rigorous science. For example, standard scientific practices insist, at a minimum, that research be rigorously peer reviewed and that the methods be communicated in a way that allows the research to be replicated.[29] Over time, sectors within science, particularly editors of biomedical journals, have also insisted that the underlying data be shared;[30] the researchers' affiliations and biases be openly disclosed;[31] and that authorship be certified to ensure that an author has the right to make all final decisions on a manuscript, which

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[29] *See, e.g.,* HELEN E. LONGINO, SCIENCE AS SOCIAL KNOWLEDGE 80 (1990); Philip Kitcher, *Patterns of Scientific Controversies, in* PETER MACHAMER, MARCELLO PERA, & ARISTIDES BALTAS, EDS., SCIENTIFIC CONTROVERSIES: PHILOSOPHICAL AND HISTORICAL PERSPECTIVES 31-35 (2000) (on methods and theories); AAAS, SCIENCE FOR ALL AMERICANS: A PROJECT 2061 REPORT ON LITERACY GOALS IN SCIENCE, MATHEMATICS, AND TECHNOLOGY 28 (1989).

[30] *See, e.g.,* NATIONAL RESEARCH COUNCIL, NATIONAL ACADEMIES OF SCIENCES, SHARING PUBLICATION-RELATED DATA AND MATERIALS: RESPONSIBILITIES OF AUTHORSHIP IN THE LIFE SCIENCES 4 (2003) (advocating a "uniform principle for sharing integral data and materials expeditiously" or UPSIDE); NATIONAL RESEARCH COUNCIL, NATIONAL ACADEMIES OF SCIENCES, RESPONSIBLE SCIENCE 11 (1992) (noting that scientists "are generally expected to exchange research data as well as unique research materials that are essential to the replication or extension of reported findings"); ROBERT K. MERTON, THE SOCIOLOGY OF SCIENCE (1973, ed. Norman Storer).

[31] *See, e.g.,* SHELDON KRIMKSY, SCIENCE IN THE PRIVATE INTEREST 125-40 (2003); C. D. DeAngelis, P. B. Fontanarosa, & A. Flanagin, *Reporting Financial Conflicts of Interest and Relationships between Investigators and Research Sponsors*, 286 JAMA 89 (2001).

also serves as an endorsement by the scientist that the research findings and statement of methods are correct.[32]

Just as processes and decision-making structures serve as a proxy for ensuring a minimum level of quality and transparency in research science, so they would seem to provide an equally if not more valuable proxy in assessing the agencies' use of science for regulation. When scientific oversight processes within science do not include these bare minimum qualities, scientists generally draw an adverse inference about the quality of the resulting product. Again, these same measures seem to be fairly used to evaluate regulatory science.

Due to differences between research science and regulatory science, the basic design of the study – applying standard scientific conventions regarding ideal decision-processes to the regulatory arena – requires at least one significant adjustment, however. As just described, the agency's use of science involves many more judgments, assumptions, and uncertainties than most basic research, and each of these major choices is likely to affect a range of parties. The agency is thus developing policy at the same time it is attempting to use the available evidence in a robust way. As a result, the agency's decision-making process must ensure not only that the science is used rigorously but also that important choices are exposed in the analysis. Expert peers are not the only important reviewer of agency analyses, and stakeholders and the public must also review this work. As a result, iterative reviews may be needed to draw out all these intertwined, yet very different science and policy choices and decisions.

While a process-based examination of the agencies' use of science sheds light on the extent to which the process itself ensures that these basic principles are given some weight, a study of flow charts and agency processes is not the most direct way to examine the agency's use of science. The National Academies of Sciences (NAS) panels that examine all facets of an agency's scientific work – from the agency's identification and interpretation of the literature through the use of models to its ultimate explication of how it conducted the analysis – for example, will provide both more complete and more robust accounts of the actual quality of the agency's work. Yet the chief strength of these NAS studies – a deep, detailed account of the agency's use of science – is also a limitation, since by their nature the studies can typically only drill down deeply into a few regulatory projects. These substantive studies also generally do not investigate *why* the agency might be missing opportunities for the robust utilization of science in its products; NAS reports focus primarily on ways that the agency's substantive discussions and analyses could be improved.

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[32] For example, the Journal of the American Medical Association (JAMA) requires as a condition to publication that "[f]or all reports (regardless of funding source) containing original data, at least 1 named author (eg, the principal investigator) who is independent of any commercial funder or sponsor must indicate that she or he "had full access to all the data in the study and takes responsibility for the integrity of the data and the accuracy of the data analysis." JAMA Instructions for Authors, Data Access and Responsibility, available at http://jama.ama-assn.org/site/misc/ifora.xhtml#DataAccessandResponsibility.

The tack taken in this study is thus a complement to a detailed substantive study of the agency's science since this study looks at these same regulatory projects from a process perspective. The NAS report highlights ways that the agency's report could be better, but there is little to no attention given to the actual flow chart or process by which science is incorporated by the agency. Indeed, this feature is generally bracketed. Examining the actual processes themselves, then, hopefully illuminates process or related features that may be causing repeat problems in agency work products. Until fixed, these process problems may stand as an impediment to the agencies' ability to increase the rigor and transparency of regulatory science.

In focusing exclusively on agency decision-making processes, this study necessarily ignores other, equally important factors that inevitably impact the quality, and transparency of the agency's use of science. The focus on decision-making process thus illuminates some important features of the agency's use of science at the expense of eclipsing or even obscuring other features. This is an analytical hazard that seems unavoidable, at least to the extent that the study does not provide a reconnaissance inventory of potential problems and issues.[33] Indeed, even with respect to examining only this one specific feature – agency decision-making processes – the study must bracket several process features that could ultimately alter its conclusions. Two of these features deserve mention because they are particularly critical to the analysis. First, it is assumed that when external peer review is done, it is done in a way that is both competent and fairly neutral. Potential problems with the selection and use of reviewers, for example, are not explored in this study but left for another day.[34] It is also assumed that an agency's scientific staff is much like the scientific staff one might find in academic or other research settings in terms of competence, expertise, and ethical commitments to do excellent work. In this study, these two important features of the analysis were not investigated in any detail.[35] Indeed, if the staff is not sufficient or the peer review selection is badly biased, the best response is to repair them since both are fundamental to so much of the work that the agency does.

B. Methods

Given the vastness of the science-based regulatory universe, the study required substantial narrowing to keep it to a manageable size. This entailed several consecutive "cuts" or screening steps. These screening decisions and related methodological choices are explained below.

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[33] The Regulation Advisory Committee recommended a narrower study as opposed to reconnaissance research.

[34] *See infra* Section IV.C. (recommending this topic for further study).

[35] It may be helpful to note that at least with respect to the competency and strength of the agencies' scientific and technical staff, the interviewees and documentary evidence was generally favorable with regard to the quality of the agency's scientific work. Thus at least the evidence collected here did not undermine the assumption nor given an evidence that the ethics and competence of agency scientific work is relatively strong.

1. Identifying the Types of Science-based Regulatory Projects most in need of Study

The first step in the screening process was to identify which part of the universe of science-based regulation to examine. Many and perhaps the majority of agency decisions involve some type of scientific or factual information that counts as scientific, but given the breadth and variation in this universe of science-based regulatory projects, further focus is necessary.

This study examines only those agency decisions that require mastery of a large body of scientific literature (natural sciences and engineering) as applied to a particular policy question. Identifying and interpreting the diverse studies, applying them through models to reach predictions, and then explaining the limitations of these processes and what they imply for policy are all critical features of the regulatory projects selected here for in-depth study. By contrast, the study does not examine regulatory work that involves much more limited use of scientific or technical information – such as the use of medical information in entitlement hearings or the use of engineering data in transportation decisions. The study also does not examine the agencies' use of social science.

2. Which Agencies

The second screening step involved identifying which agencies and processes to examine within this still very large set of possible science-intensive regulatory programs. Because so little is known about agency decision-making structures, an examination of diverse approaches among the agencies was expected to yield more insights than an examination of a single set of regulations within one agency. To that end, three agencies were selected for study that engage in very different types of science-based decision-making projects.

The three agencies occupy different points within a larger matrix of agency science-based regulation. The first agency – the EPA – generally develops regulations that protect the public health and environment from pollution and dangerous products. A great deal of the science that informs EPA's work comes from toxicology, epidemiology, and ecological sciences. Because EPA covers a broader range of issues than other science-intensive agencies like the Food and Drug Administrative, it was selected as the best candidate for studying agency processes in the general area of environmental and public health protection.[36] The second agency – the Fish and Wildlife Service (FWS) of the Department of the Interior – protects certain natural resources, including endangered

[36] The Food and Drug Administration (FDA) was actually one of the agencies originally slated for investigation in this Study. In part because the nature of FDA's regulatory work parallels that of the EPA and in part because the scope of this Study was already substantial, FDA was ultimately dropped from the Study. At the point that FDA was dropped, Wagner had already conducted one set of interviews and collected a small stack of documents on the agency's decision-making. Thus if the FDA becomes a focus in further research, there is an initial set of research materials available on the agency.

species. The sciences the FWS utilizes for its science-intensive regulation is more heavily based in taxonomy, animal behavior, ecology, and related environmental studies. The FWS, perhaps more than other natural resource agencies, has come under political fire repeatedly over the last few decades, particularly with respect to its endangered species decisions. Because of this more intense scrutiny, the FWS was selected as the agency that would provide a particularly useful window into the decision processes used by natural resource agencies (as contrasted to health and environmental protection agencies like EPA) to incorporate science into publicly important decisions. The third agency – the Nuclear Regulatory Commission (NRC) – develops requirements for nuclear safety, including licensing nuclear reactors. Its formal and informal rulemakings rely on radiation sciences, but also often involve issues that are informed by complex engineering and operational sciences. The NRC is an independent agency, which provides a valuable point of contrast with the other two agencies, particularly with respect to Office of Management and Budget (OMB) review.

Although these three agencies engage in quite different types of science-based regulatory work, it is surely the case that they do not represent the waterfront of agency approaches to science, nor may they even offer windows into what are likely to be the worst practices or possibly even the best practices among the agencies (although the latter seems less likely as discussed below).[37] As such, then, this first foray into agency decision-making processes represents only the tip of the iceberg in terms of identifying regulatory features worthy of study and selecting the most varied and interesting processes within the agencies for investigation.

3. Which Programs

Because individual programs within a single agency can sometimes vary dramatically, the third step involved choosing specific programs within each agency to examine in greater detail. In the case of EPA, in particular, the agency's decision-making processes vary considerably from one regulatory program to another, although there are some common themes that run through the programs. Regulatory programs were selected within EPA that represent some of this variation. The first program selected for study is EPA's regular review of the six national air quality criteria pollutant standards (NAAQS), which are conducted through large, informal (only in the APA sense) rulemakings. This NAAQS program is renowned for its scientific quality and also for the extraordinary size of the literature that informs EPA's review. A second EPA program – the review of registrations for conventional pesticides – involves a much higher regulatory throughput (1000 chemicals as opposed to standards for six pollutants) and is conducted as a licensing decision. The nature of the scientific analyses is more uncertain and the data is much thinner as compared with the NAAQS reviews. The third EPA

[37] In the analysis section, the larger literature that bears on agency science and decision-making processes is integrated with this more grounded research to provide additional perspective on the extent to which the regulatory programs under study are wholly unique or relatively typical of other regulatory areas.

program selected for study – the EPA's Integrated Risk Information System (IRIS) – produces reference values and cancer potency estimates for exposure to toxic substances, but the assessments are informational only; these assessments are not required by statute and are not judicially reviewable. As a scientific matter, the analyses are narrower in scope than pesticide registration reviews, since they do not involve exposure estimates, but the available literature is generally even more incomplete than is the case even for pesticide registration reviews; thus scenarios and uncertainties are many and complicated and permeate these hazard and dose-response assessments.[38] These EPA programs also offer an in-depth view of science-based decisions at three different points in the administrative process spectrum (e.g., informal rules; licensing decisions; and nonbinding risk assessments) and vary with respect to the nature of the available evidence and the type of analytical models needed to reach a decision.

FWS conducts a wide range of science-based regulatory projects, but because it uses a relatively truncated approach for incorporating science into policy, it does not appear that, as compared with EPA, there is nearly as much variation from program to program in the decision-making steps that the FWS follows. In any event, due to an effort to keep the study to a manageable size, only one program was examined in the Fish and Wildlife Service that appears relatively representative – the listing of endangered species and the designation of critical habitat. These particular decisions are heavily informed by scientific analyses of the species and their need for survival, but the latter decisions on critical habitat must also be informed by economic and related considerations. FWS's decisions on listing and habitat designations are also published as informal rulemakings, and this more standard type of regulatory output should allow for easier comparisons to other agency informal rules.

Finally, the NRC, an independent agency, conducts a wide range of informal rulemakings (e.g., to establish requirements governing nuclear waste and nuclear safety) and licensing decisions. Like the FWS and perhaps even more so, NRC does not appear to have sharp differences in its approach to the incorporation of science from one type of program or regulatory decision to the next, as is the case with EPA. Thus the decision-making processes at NRC seem largely generalizable on an agency-wide level. It is assumed that NRC's informal rulemakings may be the most useful feature to study to allow for a comparison with other agencies' work, but given the importance of licensing decisions at NRC, some attention is also given to these decisions.

[38] The NRC refers to four stages of risk assessment, and IRIS captures only the first two stages: hazard ID and dose-response. Various EPA program offices will then apply exposure scenarios depending on the regulatory issue at hand to develop standards or related risk estimates.

4. What Factors

To ensure the various regulatory programs were consistently evaluated, several key principles were identified to frame the analysis. The principles emerged by melding the practical realities of regulatory science with established scientific norms and goals, such as skepticism and disinterestedness. A discussion of each of these principles follows:

1. Transparency: In using science, agencies should explain their use of the existing evidence in as robust a way as practicable. This includes identifying the overarching values and assumptions that influenced the technical decision-making (as discussed above with pesticides and endangered species); detailing the literature consulted; explaining how or why they weighted or excluded a study bearing on a policy question; how the use of different assumptions and models might alter conclusions; areas of uncertainty that limit the evidence; and what the underlying policy questions were and how the framing of the questions themselves affected the integration of scientific evidence for the issue at hand.[39] This transparency makes it possible for others to evaluate and replicate the analysis and is thus critical to the rigorous use of science.

2. Disinterestedness: Agencies should, where-ever possible, attempt to conduct their initial analysis of the scientific literature and evidence bearing on a policy question without being influenced by a preferred policy outcome.[40] While the complete separation of science from policy is not possible, a rigorous and candid explication of how the existing evidence intersects with the policy question(s) will help separate the analysis from the decision-making.[41] Ideally, this is accomplished by a first step that provides a statement of the general policy questions and an analysis of the evidence and alternative applications of that evidence to a decision, including a robust statement of uncertainties, in relation to those questions. A second step then selects the best policy choice from the resulting options. While this approach does not exactly map against the "findings of facts" and "conclusions of law" bifurcation used in trial courts, the basic idea is that a vigorous and robust airing of the facts, including uncertainties and their implications,

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[39] *See supra* note 29 (citing sources); *see also infra* note 452 and accompanying text (identifying these same principles in President Obama's Memorandum on Scientific Integrity).
[40] *See, e.g.*, SHELDON KRIMKSY, SCIENCE IN THE PRIVATE INTEREST 125-40 (2003).
[41] *See, e.g.*, Bipartisan Policy Center, *supra* note 2, at 15 (2009) (recommending that "[t]he Administration needs to devise regulatory processes that, in as many siutations as possible, could help clarify for both officials and the general public which aspects fo disputes are truly about scientific results and which concern policy").

provides a clearer record against which subsequent policy considerations can then be judged.[42]

3. Skepticism: Skepticism from a diverse set of experts is vital to robust science and also improves the transparency of the analysis.[43] There are at least two features necessary to develop this vigorous skepticism

a. Peer (expert) review or related oversight. Agencies conducting science-based decisions should insist on a rigorous expert review of their scientific analyses.[44] This expert skepticism should be applied first and foremost to the judgments embedded in the agency's scientific analysis and in the agency's explication of its assumptions. This can be done through a range of techniques that include periodic audits of technical analyses; routine intra-agency review processes; or the solicitation of expert peer reviewers that can provide input individually or through a Federal Advisory Committee Act (FACA) panel.

b. Internal debate and dissent. There should also be constant vigilance against the tendency to devolve into a "group think" mentality, which can stem from a number of diverse, but reinforcing forces within the agency including: 1) career staff scientists who work together over years or decades and seek to maintain a united front against outside criticism; 2) a perception that a management-held position should prevail when at all possible; and 3) direct intervention from supervisors or strong-willed colleagues. To protect against these risks, individual scientists should have a right to dissent, which can range from removing their name from authored reports to lodging formal dissents on decisions within the agencies.

4. Use of Stopping Rules: Science-based dialog, if done in keeping with the norms of science, has no clear stopping point. Science is continually evolving and, in theory, policy should be constantly evolving with it. This creates the need for artificial and explicit deadlines, usually based on policy, for completing the analysis associated with any given decision (referred to as "stopping rules" throughout the paper). Stopping rules thus identify the point at which the scientific record will be closed and disagreements and debates bracketed for purposes of reaching a decision. Since scientific questions will never be resolved completely, a decision subjected to stopping rules will be revisited again later, through an adaptive process that considers the new evidence and adjusts the original rule or decision as necessary.[45] While stopping rules can be amended, decision

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[42] *Id.* (recommending that "the Administration should require that a section of the Federal Register notie for any proposed guidance or rule that is informed by scientific studies describe the primary scientific questions and the primary policy questions that needed to be answered in drafting the rule").
[43] Longino, *Science as Social Knowledge, supra* note 29, at 80.
[44] *See supra* note 29.
[45] *See generally* Sheila Jasanoff, *Transparency in Public Science: Purposes, Reasons, Limits*, 69 LAW AND CONTEMPORARY PROBLEMS, Summer 2006, at 22, 37-39 (introducing the concept of stopping rules to the science and law literature).

theory suggests that it is best that they be established in advance of a process, with an opportunity to make exceptions later.[46]

5. Setting the Policy Choices against the Evidence: Those making the ultimate policy decision should be challenged on their use of science, and the decision-maker should explain his/her science-policy choices against the scientific record. This provides a mechanism for "policy" transparency. Rather than simply dropping out studies or invisibly changing assumptions or the algorithms of complex computational models, the decision-maker must be forced to explicate both technical and policy decisions and explain why they were reached.

6. Utilitarian considerations and other policy considerations, such as equitable impacts, irreversible effects, statutory requirements, etc.: These ideals or goals for scientific transparency must be balanced against other goals and principles. Resources, time, or other features may simply not justify an agency's ability to ensure that all five principles for scientific transparency enumerated above are met in a given decision-making process.

The programs varied, sometimes considerably, in their commitment to these principles. These differences are discussed in detail in the analysis section.

5. Sources of information about the Agency Decision-making Processes

Agency documents and interviews provided the primary source of information about the agencies' decision-making processes. Agency documents ranged from publicly available emails to short summaries of decision processes posted on the internet to lengthy decision documents. Interviews were conducted primarily by phone and typically with top managers within the agency; more than thirty current and former agency officials and staff at EPA, FWS, the Department of Interior (DOI), NRC, the Office of Management and Budget (OMB), the Office of Science and Technology Policy (OSTP), and the National Academies of Science (NAS) were interviewed over a seven month period.[47] This information was supplemented by over a dozen interviews with various stakeholders;[48] a search of a few individual rules to provide samples of the

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[46] For a discussion of setting stopping rules ex ante in decision theory, see WARD EDWARDS, ET AL., DECISION SCIENCE AND TECHNOLOGY: REFLECTIONS ON THE CONTRIBUTIONS OF WARD EDWARDS 86 (James Shanteau, Barbara Mellers & David Schum eds. 1999) (describing "simple stopping rules" in decision theory that specify computationally simple conditions for halting the gathering of more information). For a discussion about their ex ante use in regulatory science with regard to identifying a point at when clinical trials can be stopped because adequate information has been collected, see Nigel Stallard, et al., *Stopping rules for phase II studies*, 51 BRITISH J. OF CLINICAL PHARMACOLOGY 523 (2001).

[47] Several academics who have worked with or researched the agencies' use of science were also interviewed.

[48] The organizations interviewed generally, although not always, have PhD scientists on staff who are deeply involved in oversight of the agency's science-based decisions. The stakeholders interviewed from the public interest community included staff from: Beyond Nuclear; Environmental Defense; the Natural Resources Defense Council, PEER, Pesticide Research Institute, and the Union of Concerned Scientists.

agency's work; and surveying Governmental Accountability Office (GAO) reports, Inspector General reports, and congressional oversight hearings. While an attempt was made to document every important process step with written records to the extent possible, for some features of agency processes, agency interviews provided the only source of information on how science is integrated into the decision-making process. This "non-transparent" feature of the agencies' decision-making process is taken up again in the analysis and recommendations section.

As noted, the basic study design focuses on discrete programs within three agencies. This narrow focus makes it difficult to generalize beyond the specific programs under study. To work around this practical limitation, the analysis and recommendations identify general themes that run through many or most of the programs and suggest best practices that operate presumptively and can be rebutted when circumstances make them impracticable or otherwise ill-advised. When there is supporting evidence in the literature that a problem may be occurring more widely within the government, this information is also included in the analysis.

III. Findings

This section, which details the findings, is divided into two parts. The first part provides a detailed discussion of the decision-making approaches or flow charts used in the five regulatory programs under study. These descriptions identify comparable features of the processes used across agencies, as well as key differences.

The second part focuses more specifically on the agencies' scientific integrity policies used to protect the autonomy of scientific staff. These policies also attempt to encourage internal skepticism within the agency and provide mechanisms for internal dissent on science-intensive analyses and decisions. Because these scientific integrity programs are implemented agency-wide, they were investigated at the Departmental level. For example, rather than examine specific regulatory programs within EPA, the entire agency was studied holistically. Similarly, overall Department of Interior policies were studied rather than those specific to the Fish and Wildlife Service.

Together the two parts provide a relatively complete picture of how the agencies incorporate science into policy, at least for the regulatory programs selected for study.

Stakeholders interviewed from industry included: the American Chemistry Council, and the Center for Regulatory Effectiveness, and Exponent.

A. The Incorporation of Science into Specific Regulatory Programs

1. The Environmental Protection Agency (EPA)

a. The Review of National Ambient Air Quality Standards (NAAQS)

The findings begin with a particularly detailed examination of the NAAQS review process because it presents the equivalent of a five-star process for incorporating science into regulatory policy. Indeed, the extraordinarily elaborate, five year NAAQS review process appears unprecedented, and it is difficult to imagine any other regulatory setting where such an extravagant science-policy process may be necessary. On the other hand, precisely because the NAAQS decision-making process is so exemplary, it offers numerous lessons for simpler, low-budget agency processes with respect to developing a rigorous analytical approach to science-policy.

The initial section on the NAAQS process concludes with a discussion of some of its most innovative features. This discussion spotlights features that then inform the analysis of other agency programs.

The Law of NAAQS

Under Section 109 of the Clean Air Act, EPA is required to review at regular, five-year intervals the standards, as well as the supporting scientific assessment criteria, for six criteria or general pollutants that EPA has identified under Section 108 of the Act.[49] Section 109 of the Clean Air Act not only sets specific deadlines for EPA's staggered review of the criteria pollutant standards, but it also provides several substantive and procedural constraints on that decision-making process.[50] First, Congress required that a primary NAAQS standard be set at a level that is "requisite to protect the public health" with "an adequate margin of safety."[51] The Supreme Court has confirmed that this mandate allows EPA to consider only scientific and not economic factors in setting the standards for these criteria pollutants.[52] Second, Congress required extensive involvement in the standard-setting exercise by a seven-member expert panel that "includ[es] at least one member of the National Academies of Sciences, one physician, and one person representing State air pollution control agencies."[53] By statute, this panel

[49] 42 U.S.C. § 7409(d)(1). This review process of National Ambient Air Quality Standards (NAAQS) is mandatory, and EPA has been sued numerous times for missing its deadline. *See, e.g.,* Comm. for a Better Env't v. U.S. E.P.A., No. C 07-03678 JSW, 2008 WL 1994898, at *1 (N.D. Cal. May 5, 2008) (bringing suit to compel the EPA to perform its past due, mandatory review duties). Indeed, EPA's review and reform of the NAAQS process in 2006, discussed below, was triggered by a realization that EPA was growing only further and further behind in meeting its statutory deadline. Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Jan. 18, 2012.
[50] 42 U.S.C. § 7409(d)(1).
[51] *Id.* at § 7409(b)(1).
[52] *Id.* at § 7409(b)(1); *see* Whitman v. American Trucking Associations, Inc., 531 U.S. 457 (2001).
[53] *Id.* at § 7409(d)(2)(A)-(B).

is authorized to make recommendations to the Administrator on possible revisions, as well as to review EPA's scientific assessments. In practice, the panel tends to focus its role on reviewing EPA's various scientific and policy documents, although the panel can make recommendations independent from these documents.[54] In response, EPA created the Clean Air Scientific Advisory Committee (CASAC), a standing committee chartered under the Federal Advisory Committee Act (FACA), which plays an important role in the EPA's NAAQS review process. Finally, EPA's decision to revise or retain a NAAQS must undergo a public notice and comment period.[55]

In the forty years that have followed passage of the Clean Air Act, EPA's implementation of its NAAQS reviews has evolved over time. The scientific analyses in these reviews have grown from short, relatively simple assessments to encyclopedic assessments that even experts sometimes labeled as impenetrable.[56]

EPA's challenges in conducting NAAQS reviews are made still more daunting because the literature that EPA must consider during a review period is substantial. A single NAAQS review can involve the analysis of thousands of studies.[57] As a result of this highly complex and involved analysis, EPA has experimented over the decades with different techniques for explicating its judgments as well as for managing the huge and growing scientific literature. Although it has not been easy, EPA appears to have finally developed a transparent process that produces analyses that are accessible to expert onlookers and that manages successfully to bridge science and policy in ways that appear worthy of replication.

Steps in the NAAQS Revision Process

To gain control over the sprawling NAAQS process and bring its NAAQS reviews back on schedule and limit future litigation, Administrator Johnson under President George W. Bush empaneled a "top-to-bottom review" of the NAAQS process in 2006.[58] The EPA staff recommendations from that initiative have now been largely implemented,[59]as illustrated in the figure below.[60]

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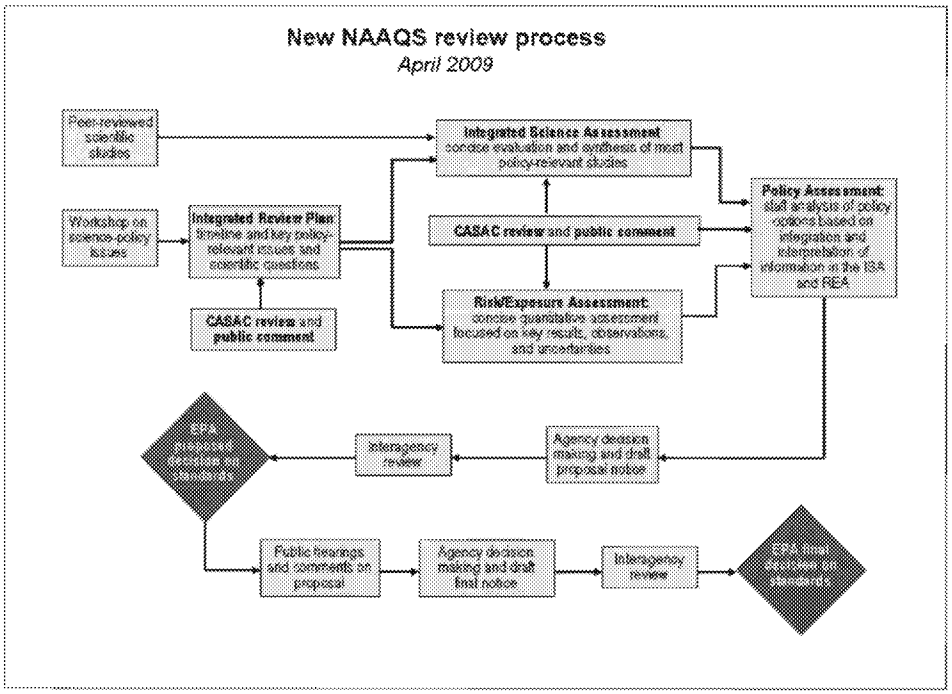
[54] *Id.*

[55] *Id.* at § 7409(b)(1), *referencing* (a)(1)(A).

[56] EPA, Review of the Process for Setting National Ambient Air Quality Standards, March 2006, Review at E-1, available *at* http://www.epa.gov/ttnnaaqs/pdfs/naaqs_process_report_march2006.pdf.

[57] Interview with EPA Staff, Office of Air and Radiation, July 26, 2011; Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012; Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Jan. 18, 2012.

[58] EPA, Review of the Process for Setting National Ambient Air Quality Standards, March 2006, at E-1 [hereinafter EPA, NAAQS Review], available at http://www.epa.gov/ttnnaaqs/pdfs/naaqs_process_report_march2006.pdf. Although the primary impetus for this review was concern about the ability of EPA to meet its statutory (and judicial) deadlines, two of the four priorities were to improve the transparency of EPA's use of science, particularly in relation to policy. Specifically, among the four key charges, the team was asked to determine ways to clarify the distinctions between science and policy judgments and to identify and characterize uncertainties in



scientific information. *See* Memo from George Gray and William Wehrum to Marcus Peacock, April 3, 2006, at page 1 (memo available at http://www.epa.gov/ttnnaaqs/pdfs/naaqs_process_report_march2006_cover.pdf); *see also* EPA, NAAQS Review, *supra,* at Appendix 2 (setting out more elaborate bullet points on the priorities for the review team) (appendices available at http://www.epa.gov/ttnnaaqs/pdfs/naaqs_process_report_march2006_attachments.pdf). Interestingly, some of this enhanced transparency, at least initially, was also expected to result from transferring responsibility from EPA staff to the political management for producing key reports, particularly the policy assessment. As discussed below, this particular tact did not ultimately work; many observers believed improved the scientific rigor or transparency of the document suffered and authorship was returned to EPA staff. Interestingly, some of this enhanced transparency, at least initially, was also expected to result from transferring responsibility from EPA staff to the political management for producing key reports, particularly the policy assessment. As discussed below, this particular tact did not ultimately work; many observers believed improved the scientific rigor or transparency of the document suffered and authorship was returned to EPA staff.

[59] EPA's own documentation of this process is somewhat patchy. For its public overview, see EPA, Process of Reviewing the National Ambient Air Quality Standards, last updated on August 25, 2011, available at http://www.epa.gov/ttnnaaqs/review.html. Beyond this general statement, the next best sources to understand EPA's process is the review report (which obviously was prepared prior to implementation), *see* EPA, NAAQS Review, *supra* note 58, and by accessing EPA's individual reports prepared after the 2006 review. (For particulates, for example, see EPA, Particulate Matter (PM) Standards, last updated on November 8, 2011, available at http://www.epa.gov/ttnnaaqs/standards/pm/s_pm_index.html. After the 2006 review, Administrator Jackson made some additional adjustments to implementation of the NAAQS process; the most significant change is discussed at the end of this Section and concerns authorship of the staff policy assessment. *See* Process for Reviewing National Ambient Air Quality Standards memorandum from Lisa Jackson to Elizabeth Craig and Lek Kadeli, May 21, 2009, available at http://www.epa.gov/ttnnaaqs/pdfs/NAAQSReviewProcessMemo52109.pdf.

[60] Excerpted from *id.* at 3.

As this flow chart shows, the current NAAQS decision-making process involves four separate staff-authored reports, each of which each constitutes a distinct stage in the process. This flowchart is a simplified representation of the process; the steps in the process are described in greater detail below (in some cases providing additional sub-steps not included in the flowchart). Cumulatively these reports evaluate the scientific evidence to determine whether a revised standard is needed. A discussion of each stage follows.

1. The Planning Report (Integrated Review Plan)

The first stage – the development of a planning report - begins with a "kick-off" workshop that solicits comments from the public and scientific community (including invited scientists) about developments in the science and policy that should frame EPA's review.[61] The workshop focuses specifically on scientific discoveries and related developments occurring over the past five years that should inform EPA's review of the standard and hence deserve careful scientific review.

After the workshop, the EPA staff from the Office of Research Development (ORD) and the Air Office prepares an integrated review plan. The primary purpose of this planning document is to frame "key policy-relevant issues that would generally be used to frame the science assessment, risk/exposure assessment, and policy assessment." The report also sets a timetable for completing subsequent stages of the process.[62]

The planning report is integral to enhancing transparency of the NAAQS review.[63] By framing the relevant science-policy questions, the planning report provides a focus for the remaining four years of EPA's analysis.[64]

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[61] *See* EPA, Generic NAAQS Review Process, March 2007, available at http://www.epa.gov/ttnnaaqs/pdfs/peacock_4_17_07_attachment2.pdf.

[62] EPA, NAAQS Review, *supra* note 58, at 24.

[63] *Id.* The planning report is thus not a trivial step in the process; EPA allocates almost a year to its finalization and the planning reports alone are substantial in length – the particulates planning document was eighty-five pages in length, for example. A draft planning report is reviewed internally and then by CASAC and the public. Based on this feedback, EPA revises the planning document. For a sample planning document, see EPA, Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter, March 2008, available at http://www.epa.gov/ttnnaaqs/standards/pm/data/2008_03_final_integrated_review_plan.pdf. See in particular pages 18-21 of *id* (stating policy-relevant questions for primary PM NAAQS that expand on the excerpts provided above in the text).

[64] It is hoped that "[i]n discussing policy-relevant issues, this plan could help clarify appropriate distinctions between science and policy judgments and/or elaborate on important concepts and terms that have both science and policy components." *Id.* Examples of policy-relevant questions identified by EPA for its particulate matter NAAQS process are:

- Has new information altered conclusions from previous reviews regarding the plausibility of adverse health effects associated with exposures to $PM_{2.5}$, PM_{10}, $PM_{10-2.5}$, or alternative PM indicators that might be considered?

2. *Integrated Scientific Assessment Report*

At the next step of the NAAQS review, EPA compiles an integrated scientific assessment (ISA) of the existing scientific literature. This is effectively a review of all of the scientific evidence bearing on the discrete policy questions identified in the Planning Report.[65]

Generally, staff in the National Center for Environmental Assessment in the EPA's Office of Research and Development, supplemented by contracts with academics for specific topics, identify and evaluate thousands of studies published since the prior NAAQS review and then draft individual chapters of an ISA. The EPA staff interprets and integrates the scientific evidence to draw key conclusions and the basis for the conclusions. There are multiple points of review (at least three) from intra-agency reviewers, CASAC and the public before the ISA is considered final.[66] While the resulting ISAs are hailed as vastly more focused and concise than their predecessor (criteria) documents, they still are quite long and technical, and EPA has included, with CASAC encouragement, an Executive Summary in recent ISAs to aid communication of the findings to policymakers and stakeholders. In at least some cases these reports are more than 1000 pages in length, not counting the appendices.[67]

3. *Risk/Exposure Assessment Report*

Based on its analysis of the scientific evidence in the ISA, staff in the EPA's Office of Air Quality Planning and Standards then prepares a separate risk assessment report that uses this evidence to model and predict the effects of alternate standards on public health. While these risk assessments are constrained by the available air quality data and concentration-response data, the goal at this stage of the process is to employ

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- What evidence is available from recent studies focused on specific size fractions, chemical components, sources, or environments (e.g., urban and non-urban areas) of PM to inform our understanding of the nature of PM exposures that are linked to various health outcomes?
- To what extent is key scientific evidence becoming available to improve our understanding of the health effects associated with various time periods of PM exposures, including not only short-term (daily or multi-day) and chronic (months to years) exposures, but also peak PM exposures (less than 24-hour)?

Id. at 18-19.

[65] In stark contrast to EPA's earlier version of this assessment in previous NAAQS processes (i.e., the infamous "criteria document"), the new and improved integrated scientific assessment is more concise and focuses the assessment on the specific questions framed in the planning report. More detailed information is reserved for annexes, which can sometimes be longer than the body of the report. While the ISA and the "criteria" document overlap significantly in content, the other two reports were not contained in the criteria document, by and large, and hence go beyond the information that EPA provided in earlier approaches.

[66] For a flowchart for production of the scientific assessment, see Figure 4.1 in EPA, Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter, March 2008, at 25, available at http://www.epa.gov/ttnnaaqs/standards/pm/data/2008_03_final_integrated_review_plan.pdf.

[67] See, e.g., EPA, Integrated Science Assessment for Particulate Matter, Final Report Dec. 2009, available at http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=216546.

multiple models to produce quantitative risk estimates, accompanied by expressions of the underlying uncertainties and variability, for various endpoints, such as the impacts of a pollutant on susceptible populations and ecosystems.[68] The risk assessment process itself begins with a planning/scoping stage, which again involves CASAC review and public comment, followed by two more periods of intra-agency, CASAC, and public comment on the draft risk assessment reports.[69]

4. *Policy Assessment Report*

The last document in the process is a policy assessment that "bridges" these more science-intensive (ISA and risk assessment) reports to the policy questions at hand. The policy assessment is, in and of itself, an extensive document (in the EPA's review of the particulate matter standard, the policy assessment was over 450 pages in length, including appendices), but the discussion is written for nonscientists who do not have an extensive background in the relevant science.[70]

In this final staff report, the scientific literature is summarized in a way that relates to the overarching policy questions. The report then offers alternative health protection scenarios (and standards), as well as alternative welfare protection scenarios and secondary standards, that are supported by the evidence and risk assessments. The policy analysis also provides a discussion of remaining questions and key uncertainties and identifies priorities for further data collection.[71]

The policy assessment is typically reviewed by internal EPA staff, the public and by CASAC twice to ensure it is faithful to the scientific assessments and that important scientific information is not lost in translation.[72] It is worth noting that even at this late stage, CASAC review and comment is rigorous and extensive. For example, the second CASAC review of EPA's policy assessment for the review of particulate NAAQS consists of over 70 pages of single-spaced comments.[73]

5. *Inter-agency Review*

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[68] *See, e.g.*, EPA, Planning report for Integrated Assessment, *supra* note 66, at 41 (describing this goal of the risk assessment).
[69] *See, e.g.*, *id.* at 54.
[70] For a sample of a policy assessment, see EPA, Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards, April 2011, available at http://www.epa.gov/ttnnaaqs/standards/pm/data/20110419pmpafinal.pdf.
[71] See Appendix C for an excerpt from a policy assessment report.
[72] For a very brief summary of CASAC input, see *id.* at 2-100 through 2-101 (summarizing CASAC advice).
[73] For the second CASAC review of EPA's policy assessment for particulates, see Letter from Dr. Jonathan M. Samet, Chair, CASAC, to Lisa P. Jackson, September 10, 2010, available at http://yosemite.epa.gov/sab/sabproduct.nsf/CCF9F4C0500C500F8525779D0073C593/$File/EPA-CASAC-10-015-unsigned.pdf.

After completing this extensive analytical work-up, EPA officials select a proposed standard and write a proposed rule. The agency's proposed rule then goes to OMB. During this process EPA meets with OMB and other agencies and apparently receives comments, both written and oral, on its proposal.

According to EPA staff, the oral communications are protected by the deliberative process privilege and are not made public, although interagency comments received in writing may be posted in the rulemaking docket after the rule is signed.[74] The idea behind this deliberative process exception to the Freedom of Information Act (FOIA) is to allow the free and uninhibited exchange of ideas and positions within government and thus it is a discretionary claim.[75] Nevertheless, OMB currently appears to apply the deliberative process exemption liberally.[76] In the course of this review,[77] OMB not only offers comments and suggestions on the EPA's rule, but some EPA staff members maintain that OMB determines the point at which a proposed or final rule responds adequately to all of the comments and can exert significant influence over the content of the rule.[78]

6. *The Final Rulemaking Process*

EPA generally hires a contractor to summarize the public comments, which are collected in a Background Information Document ("BID") document. EPA staff then

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[74] Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012. As discussed *infra* Section III.A.4., in some cases an email exchange between EPA and other agency, most commonly OIRA, is posted but the attachment that contains comments or edits is not posted. It is not clear whether EPA would claim that this information is protected by the deliberative process privilege in a request under the Freedom of Information Act.

[75] Although it was initially a common law creation, the deliberative process privilege is most commonly invoked as an exemption to FOIA, which allows an agency to withhold "inter-agency or intra-agency memorandums or letter which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5); *see generally* Shilpa Narayan, *Proper Assertion of the Deliberative Process Privilege: The Agency Head Requirement*, 77 FORDHAM L. REV. 1183 (2009) (describing the history and developing of the deliberative process privilege over time).

The burden is on the government in this regard. As the Supreme Court has stated, FOIA's "basic policy of full agency disclosure unless information is exempted under clearly delineated statutory language, indeed focuses on the citizens' right to be informed about what their government is up to. Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose." U.S. Dept. of Defense v. Fed. Labor Relations Authority, 510 U.S. 487, 495-96 (1994). Indeed, the courts will require release of withheld deliberative documents if they find that the public benefits to disclosure outweigh the harm to the government. U.S. v. AT&T, 86 F.R.D. 603, 609 (D.D.C. 1979).

[76] Nina Mendelson, *Disclosing "Political" Oversight of Agency Decision Making*, 108 MICH. L. REV. 1128, 1157 (2010) (finding no reference to OMB review, even though it occurred and changes were made as a result); see also Stephanie Tatham, unpublished paper on OMB's Assertion of the Deliberative Process Privilege in Science-based Rulemakings (on file with author) (discussing OMB's extensive use of deliberative process privilege and finding that over 90% of OMB's denial of FOIA claims invoked this exemption); *see also infra* notes 484-485and accompanying text.

[77] See infra Section =.

[78] Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012; Interview with EPA Staff, National Center for Environmental Assessment, Jan. 18, 2012. See also Section III.A.4., *infra*.

determine which comments warrant changes and which comments warrant discussion in the preamble of the final rule.[79] EPA staff also report that, after the notice and comment period has concluded, OMB reviews the draft final rule, just as it did the draft proposed rule. Again, OMB review may result in changes to the substance of the final rule.[80]

Other characteristics of the NAAQS Process

Beyond these basic steps to EPA's NAAQS decision-making process, there are other features of EPA's NAAQS process that deserve mention. These features bear on both the rigor and transparency of EPA's use of science in setting the NAAQS standards.

1. Attribution and authorship

One important feature of the NAAQS process is EPA's reliance on staff to author or in the case of the ISA, co-author with external experts, the analytical reports that inform its process. Specifically, teams of EPA staff produce the four reports that lead up to the proposed rule for a revised NAAQS.[81] While EPA management is briefed through "information sessions" on the contents of these reports, there is no editing of the report by management. (EPA staff could, however, point only to tradition and not to any rule that explicitly precludes this type of editing.)[82] Indeed, at least some of the draft NAAQS reports contain the disclaimer that the "findings, opinions, conclusions or recommendations" reflect those of the authors and do not necessarily represent the views of EPA.[83]

The team of staff authors is also listed by name in the acknowledgment section of the final report. This detailed acknowledgement section links each EPA staff to his/her specific contributions to individual chapters. An agency staff member has the right to remove his/her name from this acknowledgement section if he/she disagrees with the final version of the chapter (presumably the issue has not yet arisen). Although there is dim recollection of this withdrawal occurring at least once, the fact that staff are allowed to withdraw their names provide an indicia of authorship on the supporting NAAQS reports.

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[79] *Id.*
[80] *See* Section III.A.4., *infra.*
[81] Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012.
[82] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Jan. 18, 2012.
[83] *See, e.g.*, EPA, Draft Policy Assessment for Particulate Matter, September 2009, available at http://www.epa.gov/ttn/naaqs/standards/pm/data/PreliminaryDraftPA091609.pdf. Note in this document that the names of individual staff are not listed, however. This is different from the final report which includes a detailed acknowledgement section that lists staff and reviewers by name and identifies their specific contributions to the report.

2. *Availability of the Supporting Literature*

EPA is highly committed to making the literature upon which it relies publicly accessible. In the revisions to its NAAQS process in 2006, EPA developed an elaborate database (Health and Environmental Research Online or HERO) to make the scientific research used in the NAAQS reviews accessible. Peer reviewers can access the entire version of each of the tens of thousands of referenced studies used in NAAQS reviews through this database, including copyrighted publications.[84] The public can access at least summaries of these documents, as well as the full citations.[85] Providing this type of fingertip access to the enormous library of research that supports the NAAQS allows for more rigorous review of EPA's scientific work by those inside the agency, CASAC, and stakeholders.[86]

Summary and General Observations

The process that EPA has developed over the last forty years to review the standards for the NAAQS appears to be highly regarded.[87] As one interviewee stated, "It is a process that delivers a credible standard."[88] Another EPA staff remarked that, based on the current design, "I don't know how we could be more transparent." "In a general sense, the process serves the agency well."[89] The NAAQS process was also touted as a model of scientific transparency in a recent National Academy of Science report that suggested it should be adapted to other EPA programs.[90]

There are several features of the revised NAAQS process that offer useful insights to other agencies working to incorporate science into their decisions in a rigorous and transparent way. The first and perhaps most significant innovation is EPA's decision to break out the component parts of its analyses into separate steps (or in the case of NAAQS, actual reports) that can be reviewed on their own terms.[91] As just explained, there is a planning document that identifies the policy-relevant questions; an assessment of the available evidence in the ISA; an application of the evidence in the risk assessment; and a translation of the evidence and models, and their limitations, in the policy assessment.

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[84] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Jan. 18, 2012.
[85] See the Health and Environmental Research Online (HERO) Database, last updated on February 8, 2012, available at http://hero.epa.gov/.
[86] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Jan. 18, 2012.
[87] See also Interview with Staff of American Chemistry Council, July 29, 2011.
[88] Interview with EPA Staff, Office of Air and Radiation, July 26, 2011.
[89] Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012.
[90] *See* NAS, FORMALDEHYDE REPORT, *supra* note 1, at 120-121.
[91] See EPA, NAAQS Review, *supra* note 58, at 22 (see figure)

A second, innovative feature of the NAAQS process is the iterative involvement of the CASAC, which is itself a prominent science advisory body.[92] In multiple, detailed reviews of each of the four EPA reports, CASAC scrutinizes the assumptions and alternate characterizations of the relevant scientific information. This provides rigorous external review of the agency's use of science.[93] CASAC also plays an important role in determining when a revised report has adequately responded to comments, as elaborated below.[94]

Third, the NAAQS process is developed in a way that offers multiple opportunities (at least seven) for public comment. In such a process, there seems to be less chance of group think or tunnel vision emerging in EPA's assessment of the evidence. Because of these elaborate outreach efforts, EPA presumably also encounters few surprises during notice and comment on the proposed rule, at least to the extent that the proposed rule follows from the staff reports. From the standpoint of stakeholders, the iterative comment process on individualized stages of EPA's analysis would seem to make the commenters' work more manageable and focused.

Fourth, EPA has instituted the equivalent of "stopping rules"[95] that allow it to put an end to debate and close the record with regard to new scientific discoveries.[96] CASAC historically acted as the referee on when debate could effectively close by declaring an EPA report essentially ready for finalization after specific changes were made.[97] While this "closure" role was criticized by some EPA staff members and temporarily suspended, in at least one recent case it appears that CASAC still continues to identify when it believes that a report is nearly complete and can be finalized and when yet another review is necessary.[98] CASAC's ability to determine a convenient point for closing the record, or to set "stopping rules," is taken up again in the analysis section.

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[92] Of all the science advisory bodies at EPA, CASAC seems to have consistently received the highest marks in terms of its balance, leadership, and quality of its work in the science-policy literature. *See, e.g.*, SHEILA JASANOFF, THE FIFTH BRANCH: SCIENCE ADVISERS AS POLICYMAKERS (1990) (discussing virtues of CASAC in a chapter-length case study); MARK R. POWELL, SCIENCE AT EPA: INFORMATION IN THE REGULATORY PROCESS 43 (1999) (reporting on how persons interviewed for the study on science at EPA 'gave SAB and CASAC credit for improving EPA's acquisition and use of science'); U.S. Envtl. Protection Agency, Safeguarding the Future: Credible Science, Credible Decisions 38 (1992) (noting positive effect of CASAC on EPA's decisions).

[93] CASAC, last updated on February 8, 2012, available at http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC.

[94] Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012.

[95] For a discussion of "stopping rules" see *supra* notes 45-46 and accompanying text.

[96] Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012; Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Jan. 18, 2012. Specifically, EPA will consider new studies up until the second ISA. After that point, all new evidence will be bracketed and reserved for the next five year NAAQS review. *Id.*

[97] *Id.*

[98] Cf. CASAC Draft Letter to EPA regarding Second Draft of ISA for Ozone, 2/8/12, at 1, available at http://yosemite.epa.gov/sab/sabproduct.nsf/264cb1227d55e02c85257402007446a4/FC9FAB17E2B06D4D8525799E0069EF5B/$File/draft+ozone+SERD+ISA+letter-020812.pdf (recommending that EPA prepare a revised draft of the ISA and submit it to CASAC for a third review opportunity).

EPA also has stopping rules for emerging science. If a new study emerges that is relevant to NAAQS, but it is not available until after the draft ISA has been peer reviewed, EPA will not consider it until the next NAAQS review five years later.[99]

Fifth, the current NAAQS reports provide attribution to named staff through a detailed acknowledgements section. The acknowledgement section identifies their specific contributions to the report and, if staff members disagree with the contents of the report they can ask that they not be acknowledged.[100] There was a sense among agency interviewees that it would make little sense *not* to acknowledge authorship. Doing so is believed to result in more robust and scientifically credible reports and to provide scientific staff with deserved credit for their work.[101]

Sixth and finally, during the throes of its evolution, the NAAQS process shed some light on the tradeoffs between scientific staff and political management in preparing technical documents. One of these revelations occurred when EPA placed responsibility for editing/finalizing the policy assessment with political rather than EPA staff. While staff helped draft the policy assessment, ultimate editing and decision-making authority was reserved for political management and the assessment was published as an Advance Notice of Proposed Rulemaking, thus also requiring OIRA clearance.[102] The resulting policy assessment, prepared under the supervision of political management and reflecting management's views, was harshly criticized by both EPA's Office of Research Development and by CASAC as compared to the prior staff- authored reports of the same type.[103] CASAC in particular noted that this management-supervised policy assessment departed from and arguably ignored scientific recommendations of CASAC; did not connect the options suggested to the scientific literature; and presented options as equally plausible, despite their very different scientific underpinnings.[104] In response to this

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[99] In cases of new scientific discoveries, EPA sometimes does prepare a "provisional science" report near the end of the NAAQS review that considers whether certain new and emerging science would have materially altered its analysis or conclusions. In cases where EPA has done this additional provisional science report, it has consistently concluded that the new science would not materially alter its assessment. One EPA staff scientist suggested that this is because the supporting studies are so numerous that additional research is unlikely to significantly alter the assessment's conclusions. Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012; Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Jan. 18, 2012.

[100] Exchange with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, March 11, 2012.

[101] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Jan. 18, 2012; Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012.

[102] Since the assessment was published as an Advanced Notice of Proposed Rulemaking, it required OMB-clearance. *See* EPA, Advanced Notice of Proposed Rulemaking: National Ambient Air Quality Standards for Lead, 72 Fed. Reg. 71488 (2007).

[103] Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012.

[104] *See* Letter from Dr. Rogene Henderson, Chair of CASAC to Administrator Johnson, Jan. 22, 2008, at 1 (condemning the ANPR for lead prepared by EPA management as "unsuitable and inadequate" because it "does not provide the underlying scientific justification for the range of options for standard-setting that the

controversy, Administrator Jackson ultimately determined that the policy assessment should reflect the views of EPA staff, not political management.[105] Employees and CASAC report a high level of satisfaction with the change.[106] At least in this case, the staff-authored report provided a more robust, nuanced, and complete statement of the scientific information as it informs policy in comparison to a report that was within the ultimate control of EPA's political management.

In sum, there are a number of features of the NAAQS process that appear both innovative and promising for science-policy analysis.[107] While extrapolating from this expensive,[108] time-consuming,[109] and science-intensive NAAQS process to more mundane science-based regulatory projects is difficult, the process still appears to serve as a useful model for at least identifying the key steps necessary for the development of rigorous and transparent science-based regulation.

b. The Review of Conventional Pesticide Registrations

Much like the NAAQS standard-setting process, the review of existing, conventional pesticide registrations has undergone a major revision in the wake of the 1996 amendments to the Food Quality Protection Act.[110] Since its authorizing statute now requires EPA to review over 1000 pesticides every fifteen years,[111] the process EPA

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agency is currently considering" and providing substantial details in the remainder of the letter regarding these concerns).

[105] *See* Jackson memorandum, May 21, 2009, *supra* note 59.

[106] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Jan. 18, 2012; Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012.

[107] Interestingly, none of these features of the NAAQS process was mentioned by the NAS panel in touting it as a model for IRIS assessments. *See* NAS, FORMALDEHYDE REPORT, *supra* note 1.

[108] Although cost estimates are not available, the staff suggested that the NAAQS revision process is likely quite expensive. Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012.

[109] Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012; Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Jan. 18, 2012.

[110] After a series of fits and starts, for more than two decades, EPA struggled to review and re-register "grandfathered" pesticides that had been on the market at the time the Federal Insecticide and Fungicide Act (FIFRA) was passed in 1972. The delays and unequal treatment of these old pesticides as compared to new pesticides not only sparked harsh criticism of EPA's pesticide program, but it prompted a series of congressional amendments intended to rectify the delay. Congress now requires EPA to review all the registrations (or licenses) of existing pesticides on the market every fifteen years. Specifically, amendments to FIFRA in 1996 require EPA to develop "a procedure for accomplishing the periodic review of registrations" and to ensure that "pesticide's registration [is reviewed] every 15 years." Section 3(g) of FIFRA, 7 U.S.C. § 136a(g). This statutorily mandated time frame is intended to ensure that pesticide registrations will not fall too far behind scientific and technological developments and that EPA provides all marketed pesticides with a rigorous review.

[111] EPA, "Registration Review Highlights", available at http://www.epa.gov/oppsrrd1/registration_review/highlights.htm. Specifically, EPA is reviewing the registrations of all pesticides registered at the time the law was passed, in August 1996. *See* EPA, "Agrichemicals: Food Quality Protection Act – Pesticide Reviews," www.epa.gov/agriculture/factsheets/epa-305-f-00-006ag.html. This requires EPA to review more than 50

has employed to incorporate science into the revision process offers a useful point of comparison with the EPA's review of the NAAQS. To meet its deadline, the agency has set a goal of completing a review of approximately 60–70 pesticide products a year, as opposed to the review of about one NAAQS standard over the same time frame. The statutory mandate is also more open-ended and gives the agency discretion to consider both scientific and economic factors when making its decisions. Specifically, EPA may register a pesticide if the EPA is satisfied that the pesticide "will not generally cause unreasonable adverse effects on the environment."[112]

Despite the very different workload, EPA's incorporation of science into its review of pesticide registrations tracks the NAAQS process in several important ways. First, like in NAAQS, EPA's pesticide office usually develops a series of separate reports – a planning report, a risk assessment report, and a proposed decision – for each pesticide reviewed. EPA also solicits public comment on each of these three documents. Finally, like NAAQS, EPA's analytical process stretches over five or six years for each pesticide.[113] In contrast to the NAAQS process, however, EPA does not engage external peer reviewers for individual pesticide registrations except in highly unusual cases.

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chemicals a year in order to stay on schedule to complete the reregistration of 1100 pesticides by 2022. Interview with EPA Staff, Office of Pesticide Programs, August 5, 2011. *See also* EPA, "Accomplishments under the Food Quality Protection Act," http://www.epa.gov/pesticides/regulating/laws/fqpa/fqpa_accomplishments.htm.

[112] 7 U.S.C. § 136a(c)(5)(D). The pesticide must also satisfy several other statutory conditions, but they are not relevant to this Study. These additional requirements are that a) "its composition is such as to warrant the proposed claims for it"; b) "its labeling and other material . . . comply with the requirements of this subchapter"; and c) "it will perform its intended function without unreasonable adverse effects on the environment." *Id.*

Congress provided EPA with several additional tools to assist it in this science-based decision-making. First, EPA has the authority to require manufacturers to conduct additional testing needed to evaluate a pesticide registration (termed "call-in" authority). *Id.* at § 136a(c)(2)(b). In the data call, EPA can require manufacturers to submit (or, if necessary conduct) studies on a variety of effects, such as toxicological and ecological effects. *See, e.g.*, EPA Staff Background Paper #3.1, TRAC 5/27/98, available at www.epa.gov/oppfead1/trac/dci.htm. Second, EPA may solicit expert scientific advice from EPA's standing Science Advisory Panel (SAP), established under 25(d) of FIFRA and chartered under FACA. (For the 2006 charter of the SAP, see http://www.epa.gov/scipoly/sap/pubs/charter.pdf.) The SAP is statutorily required to review notices of intent to cancel or reclassify pesticide regulations, as well as other specifically identified regulations, but the Panel can also be used by EPA to evaluate other aspects of its decision-making, including difficult registration review decisions.

[113] Five or six years does not seem to be an unusually long time for the development of technically complicated informal rule at EPA. IRIS assessments, as described Section III.A.1.a. *infra*, can take a decade to finalize. MACT standards, which are technology-based emissions standards for air toxics promulgated for various individuals sectors of industry, take about 5 and half years, on average, to promulgate as final rules. *See* Wendy Wagner, Katherine Barnes, and Lisa Peters, *Rulemaking in the Shade: An Empirical Study of EPA's Air Toxic Emission Standards*, 63 ADMINISTRATIVE LAW REVIEW 99, 144-45 (2011). And of course at other agencies the informal rulemaking process for science-intensive regulations can stretch still longer. At OSHA, workplace standards are promulgated very slowly, if at all and appear to stretch over years or even decades. *See* OSHA Website, "History of Health Standards and Need to Revise PELs," available at http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=PREAMBLES&p_id=768 (conceding that "OSHA has issued only 24 substance-specific health regulations since its creation [in

The Steps to the Review of Pesticide Registrations

There are four steps to EPA's registration review process for each pesticide, three of these steps involve the preparation of a staff report that is subjected to notice and comment.[114]

1. The Planning or Summary Document. This document describes the existing literature that bears on the pesticide under study and solicits additional information on it.[115] The Summary Document also identifies in specific terms the data EPA needs to complete its assessment.[116]

2. The Data Call-in. EPA regulations establish the test protocols and risk assessment models it will use to evaluate each pesticide registration.[117] Since it is not uncommon for some of the information needed to complete these assessments to be missing, EPA issues

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1970]. It has not been able to review the many thousands of currently unregulated chemicals in the workplace or to keep up with reviewing the several thousand new chemicals introduced since its creation"). While there is no clear point for comparison at NRC, even the renewal of the license of a nuclear plant stretches to nearly two years per license. *See* OIG, Audit of NRC's License Renewal Program, Sept. 6, 2007, at 4. This offers a stark point of comparison with the FWS's very short deadlines for listing and habitat designation, discussed Section III.A.2, *infra*.

[114] The registration review process assesses the risks of pesticides already registered and in use. Perhaps because of this, the process is designed like an informal rulemaking process, without adversarial hearings but instead relying on notice and comment at several distinct points in the process. See generally 40 C.F.R. §§ 155.40-58 (setting out the pesticide registration review process).

[115] This document is the rough equivalent of the planning document described above for NAAQS. In contrast to the NAAQS planning document, the precise questions in need of public input are not always identified explicitly or in an accessible way, although in some cases, the proposed work plan provides very specific questions for the subsequent scientific analysis. *See, e.g.,* EPA, Summary Report for Butylate, June 2009, downloadable at http://www.epa.gov/oppsrrd1/registration_review/butylate/index.html. EPA also provides a detailed fact sheet that summarizes the existing information available on the pesticide in the Summary Document. Although not all of these summary documents include complete citations or accessible links, they provide a basic overview of the information within the agency's files that is relevant to the pesticide review. For example, for Acephate, EPA's summary report does not always contain citations to the literature. There does not appear to be a link to all the underlying studies either. See EPA, Summary Report for Acepthate, available at at http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2008-0915-0003;oldLink=false. Stakeholders did not seem to feel handicapped by the inaccessibility of the studies, even studies done by manufacturers that are not available. Interview with Pesticide Research Institute (a public interest organization), Aug. 1, 2011. This may be attributed in part to limited time and resources to review the studies, however. Finally, the work plan includes a timeline for the review.

[116] For a general description of the Summary Report see EPA's overview of the re-registration steps at http://www.epa.gov/oppsrrd1/registration_review/reg_review_process.htm. After soliciting public comment on the draft Summary Document, EPA prepares a final version of the Summary document or, in some cases, simply prepares a short addendum that summarizes the comments and EPA's responses. The final Summary document is posted in a pesticide's electronic file and serves as the work plan that guides the registration review process for a pesticide.

[117] For a web-based list of the test protocols, go to http://www.epa.gov/pesticides/science/guidelines.htm; for pesticide models, go to http://www.epa.gov/pesticides/science/models_db.htm.

a "data call-in" to the manufacturers that requires them to conduct this additional testing to fill the gaps.[118]

3. The Risk Assessment. Once the additional data has been submitted by the manufacturers, the EPA pesticide team conducts a risk analysis to assess the risks of the pesticides through various exposure pathways, from drinking water to worker exposure to food. The guidelines and models used for these assessment have been peer reviewed by the Science Advisory Panel (SAP), which is an external EPA science advisory group established by statute that EPA can use to review particularly important pesticide-related decisions,[119] or an equivalent peer review body (e.g., the NAS).[120] The draft risk assessment, prepared by staff, is again subject to public notice and comment, and in some cases may be subjected to multiple public comment periods.[121] The risk assessments can also be quite lengthy – 1200 or more pages in some cases - although the length of the assessment may vary considerably depending on the pesticide being reviewed.[122]

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[118] It appears from a cursory review of recent Summary Documents and staff interviews that the need for some data call-ins in the course of a registration review decision is not unusual, and may be the norm. Interview with EPA Staff, Office of Pesticide Programs, August 5, 2011. EPA's data call-ins require OMB clearance before they can be issued since they are considered "information collection requirements" under the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq. While this OMB clearance can involve considerable transaction costs between EPA and OMB (for example, OMB currently reviews each individual data call-in before allowing it to be sent), EPA reports that to date the agency has succeeded in gaining authorization to request all of the data they deem necessary to conduct their risk assessment. Interview with EPA Staff, Office of Pesticide Programs, Jan. 27, 2012. Since OMB currently has decided it must review the call-ins individually, the process of working through the Paperwork Reduction Act with OMB can add as much as six months delay to the registration review and can involve considerable staff resources, however. *Id.* After a data call-in is issued, there is occasionally a second process of negotiation with the manufacturer with respect to satisfying the call-in demands. These settlements are similar to those occurring in civil enforcement cases. Rather than taking a manufacturer to court for noncompliance with a data call-in, EPA will agree to a somewhat different submission provided it generally meets EPA's data needs. *Id.*

Limited lab space and a variety of other factors constrain the manufacturers' ability to produce all of the requested data in a timely fashion. Manufacturers may also identify existing studies that appear to resolve some or even all of EPA's data needs. Interview with EPA Staff, Office of Pesticide Programs, Jan. 27, 2012. EPA may alter its call-in request based on these discussions, while ensuring that all basic data needs are satisfied. The resulting changes between what EPA initially requested in a call-in and what it ultimately received is detailed in the draft Risk Assessment. For a sample, see Appendix A.1. of the EPA, Chlorpyrifos Preliminary Human Health Risk Assessment for Registration, available at regulations.gov (document ID number: EPA-HQ-OPP-2008-0850-0025); Interview with EPA Staff, Office of Pesticide Programs, Jan. 27, 2012.

[119] 25(d) of FIFRA, 7 U.S.C. § 136w(d).

[120] Interview with EPA Staff, Office of Pesticide Programs, Jan. 27, 2012.

[121] For a sample, see, e.g., multiple references to various risk assessments in Readers Guide for Methyl Bromide, June 3, 2009, Docket EPA-HQ-OPP-2005-0123, available at regulations.gov; see also comments filed on multiple drafts of the assessment by industry association, the American Chemistry Council, at http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2005-0123-0444.

[122] The EPA team follows the NAS Silver Book in conducting their risk assessments, which includes following NAS's recommendations for explicating uncertainty factors, assumptions and other important judgments. Interview with EPA Staff, Office of Pesticide Programs, August 5, 2011. In a recent draft risk assessment for Chlorpyrifos, for example, EPA provides a frank discussion of data needs, changes in information over ten years, uncertainty factors, and other assumptions in the first 10 pages of the risk

4. Proposed Decision on Registration. The pesticide team uses the risk assessment to draft a proposed decision with regard to registration of the pesticide.[123] The proposed decision summarizes the scientific evidence, EPA's assessment of the evidence, and provides a proposal for re-registration, which could involve changes to the label; the legally approved uses; partial or complete cancellation; or full registration of the pesticide.[124] This proposed decision is also subject to notice and comment. OMB is not involved in reviewing these proposed rules, presumably because they are licensing decisions.

5. The Final Decision. EPA ultimately issues a final decision that responds to the information received through notice and comment.[125] This final rule is signed by the EPA director of the pesticide registration review program (a career staff position), although in more complex or controversial cases, high levels of management, including the Administrator, may be briefed on the decision.[126] Like the proposed rule, the final rule does not require interagency clearance or OMB review.

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assessment. Chlorpyrifos Preliminary Human Health Risk Assessment, *supra* note 118, at pages 2-16. It is not clear whether this type of accessible explication is unique in the agency's pesticide assessments, yet the format and approach in this sample risk assessment has the flavor of the NAAQS staff policy and planning reports with regard to more explicit and frank admissions of limitations in the available science.

[123] For some pesticide reviews, it is not necessary to conduct a new risk assessment (e.g., if a pesticide is withdrawn), in which case the staff skips the risk assessment step and moves straight to the proposed decision. Interview with EPA Staff, Office of Pesticide Programs, Jan. 27, 2012.

[124] This proposed decision is again subject to notice and comment. The format of the proposed decisions generally provides a discussion of the available information and then offers EPA's proposed decision based on that information. *See, e.g.,* outline in EPA, "Bromine Final Registration Decision," at http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2009-0167-0010;oldLink=false. Unlike the NAAQS policy assessment report, however, the proposed decision does not include a section that bridges the scientific evidence with the overarching policy questions; instead the most important judgments and assumptions would seem accessible only to experts. *See, e.g., id.* (providing a sample of this technical quality of the assessments). EPA staff opined that the agency perhaps could do better in providing clearer discussions of its exclusion/inclusion criteria, uncertainties, and other technical discussions in this proposed decision, but they believe that much of these risk-related explications are provided in a clear format in the earlier, risk assessment document. Interview with EPA Staff, Office of Pesticide Programs, Jan. 27, 2012. Moreover, it would be costly for the agency to do this more elaborate discussion. Interview with EPA Staff, Office of General Counsel, Jan. 13, 2012. The staff also reiterated that pesticide assessments are much more complicated than most other risk assessments. In contrast to the NAAQS, for example, there are multiple endpoints in pesticide assessments, which include assessment workplace risks, bystander risks, risks on food, risks in drinking water, and a host of environmental impacts, including on plants, mammals, birds, fish, and endangered species. Human exposures, moreover, occur by ingestion, inhalation, and dermal exposure. Providing an accessible explanation of the estimates for all of these endpoints, with an explication of the accompanying uncertainties and assumptions, would be extremely costly and time-consuming. *Id.*

[125] See 40 C.F. R. § 155.58.

[126] Interview with EPA Staff, Office of Pesticide Programs, Jan. 27, 2012.

Other Characteristics of Pesticide Registration Review

As with the NAAQS process, there are other features of pesticide registration reviews that deserve mention with respect to the integration of science into the decision.

1. Authorship

Much like the NAAQS process, a multidisciplinary team of EPA staff works together on all phases of the registration process, and authorship rights are afforded to these staff with respect to their analyses. Specifically, staff members are listed by name in the front matter of each of the pesticide registration reports.[127] Because EPA staff members serve as authors, they both gain credit and bear responsibility for the quality of the analysis presented in the document.[128]

While these documents are subjected to some intra-agency review before they are shared with the public, they are not subjected to management-initiated edits or revisions without the staff authors' assent.[129] EPA's approach to authorship in pesticide reviews thus seems to parallel the NAAQS process with respect to producing reports in a team or consensus-based fashion.[130]

2. Accessibility of the Literature

Also like the NAAQS process, EPA endeavors to provide a comprehensive bibliography of all the literature it relied upon in its draft risk assessment.[131] While the literature cannot be accessed through an internet database, as is the case with the HERO database used in NAAQS, EPA provides complete citations where possible.[132] EPA also prepares web pages for each pesticide[133] and a "readers' guide" to the docket to walk the reader through the various key decisions and stages of the registration review process.[134]

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[127] *See, e.g.*, Chlorpyrifos Preliminary Human Health Risk Assessment, *supra* note 118, at 1.
[128] Interview with EPA Staff, Office of Pesticide Programs, Jan. 27, 2012.
[129] *Id.*
[130] In contrast to NAAQS, in which the proposed and final rules are reviewed and potentially revised by management, the proposed and final decisions for pesticide review decisions are subject to a highly delegated decision making structure. The director of the conventional pesticide unit is the final signatory of all registration decisions. *Id.* Higher level management of EPA is not in the line of command and their assent is not necessary for pesticide approval.
[131] *See* Chlorpyrifos Preliminary Human Health Risk Assessment, *supra* note 118, at 102-110.
[132] *See, e.g., id.*
[133] See http://www.epa.gov/oppsrrd1/registration_review/chlorpyrifos/index.htm for information on this pesticide, including the summary document and all other reports and decisions.
[134] *See, e.g.*, Readers Guide for Acephate, March 18, 2009, docket number EPA-HQ-OPP-2008-0915-0002, available on regulations.gov.

EPA does not make the manufacturers' safety testing data and studies publicly available in the course of its registration reviews because of a requirement in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (Section 10(g)) that limits general public access to the data to ensure that the safety and related test data are not released to pesticide manufacturers in other countries.[135] (The justification and continued necessity of this requirement is not developed here except to note that questions have been raised about its benefits, particularly in light of the costs to transparency with respect to basic toxicity and related information regarding registered pesticides). To gain access to this information, a person must certify that he/she does "not seek access to the data for purposes of delivering it or offering it for sale to any such business or entity or its agents or employees and will not purposefully deliver or negligently cause the data to be delivered to such business or entity or its agents or employees."[136] FIFRA also requires EPA to keep a record of the "names of persons to whom data are disclosed" and must "inform the applicant or registrant of the names and affiliations of such persons."[137] Most problematic, the information cannot be accessed until after a registration decision.[138] Because it is partly classified information under FIFRA (there is public access, but it is limited), the data must also be viewed in EPA offices.[139]

In an effort to provide maximum transparency of this manufacturer data in spite of the restrictions of Section 10(g), EPA does post summary tables of each of these manufacturer-produced studies. It also employs teams of EPA scientists to ensure that the studies are done well.[140] These summary tables provide outsiders with at least some window into the nature of the scientific information supporting a decision.

3. *External Peer Review*

EPA does not routinely seek external peer review of its individual pesticide registration decisions or supporting risk assessments.[141] Instead, the opportunity for

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[135] 7 USC § 136h(g)(1).

[136] Interview with EPA Staff, Office of Pesticide Programs, Jan. 27, 2012. The person seeking access must certify that they are not an "employee or agency of any business or other entity engaged in the production, sale or distribution of pesticides in countries other than the U.S. . .". *Id.* Although this certification appears light for most persons, there is evidence that EPA may be denying FOIA requests for this information. A propublica investigation revealed that EPA denied 38 FOIA claims seeking this information from 2008-2009. Obviously further investigation is needed regarding the nature of these claims before it can be determined whether there is a relatively substantial impediment to accessing this information. *See* Jennifer LaFleur, FOIA Eyes Only: How Buried Statutes are Keeping Information Secret, available at http://www.propublica.org/article/foia-exemptions-sunshine-law. For the specific investigation under 136h(g), go to http://projects.propublica.org/foia-exemptions/statutes/113.

[137] 7 U.S.C. § 136h(g)(2).

[138] 7 U.S.C. § 136a(c)(2)(A).

[139] *Id.* at § 136h(g)(2).

[140] Interview with EPA Staff, Office of General Counsel, Jan. 13, 2012.

[141] Interview with EPA Staff, Office of General Counsel, Jan. 13, 2012. When asked whether additional external review would be beneficial to EPA's process, one staffer vigorously defended the existing approach. Interview with EPA Staff, Office of General Counsel, Jan. 13, 2012. The staffer argued that to assemble peer review panels for each of the 1000 pesticide reviews would be very costly and would not

multiple points of public input, coupled with the interdisciplinary teams and intra-agency review processes, are believed to be sufficient to provide rigorous oversight of the agency's scientific assessments and analyses.[142]

EPA does consult its standing Science Advisory Panel (SAP) for particularly difficult scientific questions, including registration cases, as in the reregistration of atrazine.[143] Generally, though, these consultations with SAP over registration reviews are the exception; indeed EPA staff could only recall one case where the SAP was involved in a conventional pesticide registration review since the 1996 amendments to the program. The SAP also reviews all models and methods used by EPA in its pesticide reviews; in fact, this appears to be the primary source of external oversight over EPA's pesticide registration decisions.[144]

4. *Inter-agency Coordination*

The role of other federal agencies in pesticide decisions is different from the NAAQS in several ways. First, and as a point of sharpest contrast, OMB's involvement in pesticide registration reviews, according to EPA staff, has been limited exclusively to its data call-in oversight under the Paperwork Reduction Act. OMB is not involved in reviewing proposed decisions for registration, even in high level cases.[145]

Also in contrast to NAAQS, USDA takes considerable interest in the review of at least certain pesticide registrations and is likely to be an active participant in these cases.[146] USDA occasionally files comments on pesticide registration reports and proposed decisions during notice and comment, although EPA staff report that USDA's involvement can also involve phone calls that are not recorded in the record.[147] Finally, because pesticides potentially affect endangered species, EPA must formally consult with the authorized agencies (National Marine Fishery Service and the U.S. Fish and Wildlife

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have benefits that outweigh the costs of the panels, not to mention the potential added delays. *Id.* Panelists with the greatest knowledge are often conflicted out of serving, and more general reviewers may lack the needed familiarity with the research (much unpublished and provided by the manufacturer) to provide a robust review unless they actually reviewed all of the studies themselves. *Id.*

[142] Interview with EPA Staff, Office of General Counsel, Jan. 13, 2012.

[143] Interview with EPA Staff, Office of General Counsel, Jan. 13, 2012. This consultation is iterative and is still ongoing. See Atrazine Evaluation Process, available at http://www.epa.gov/opp00001/reregistration/atrazine/atrazine_update.htm. More generally, EPA calls upon the SAP for consultation rather regularly. One fact sheet suggests that EPA has consulted the SAP 58 times over the last ten years. EPA, "Accomplishments under the Food Quality Protect Act, Aug. 3, 2006," available at http://www.epa.gov/pesticides/regulating/laws/fqpa/fqpa_accomplishments.htm. For more general information about the SAP, see http://www.epa.gov/scipoly/sap/basic.htm.

[144] Interview with EPA Staff, Office of Pesticide Programs, August 5, 2011.

[145] Interview with EPA Staff, Office of Pesticide Programs, August 5, 2011. The reason for this is not altogether clear, although it appears to be a relic of the "Tozzi rule" that OIRA would refrain from being involved in reviewing licensing decisions, which presumably sweep in these registration reviews that look more like informal rules than adjudications.

[146] *Id.*; Interview with EPA Staff, Office of Pesticide Programs, August 5, 2011.

[147] Interview with EPA Staff, Office of General Counsel, Jan. 13, 2012.

Service) if there is a possibility that a pesticide may adversely affect endangered or threatened species.[148] This consultation step has been fraught with difficulty and delay and has sparked lawsuits and congressional oversight hearings.[149]

5. Transparency

Stakeholders were generally satisfied with the transparency of EPA's pesticide assessments.[150] Despite their praise for the transparency of EPA's reports, stakeholders still identified numerous contestable points in EPA's analyses. These disagreements with EPA often focused on one of the following: EPA's use of models (e.g., EPA ignored factors that should have been considered and included, such as temperature, wind speed, etc.); EPA's use of uncertainty factors (e.g., the agency erroneously considered some data and used it to adjust the uncertainty factors in contestable ways); or EPA's explanation of the results of studies (e.g., it misrepresented incident reports). These issues are considered again in more detail in the analysis section.

c. EPA's Integrated Risk Information System (IRIS)

The Integrated Risk Information System (IRIS) is a database of human health risk assessments that calculates reference doses for inhalation and ingestion for human

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[148] 16 U.S.C. § 1536.

[149] A review of the correspondence to date between FWS and EPA on individual pesticide decisions reveals credible and difficult technical disagreements over critical judgments that should be used in making these assessments. *See supra* notes 20-27 and accompanying text. For example, FWS questions the viability of models used by EPA to estimate risks to endangered species or to calculate their ranges, see Memo from Marjorie Nelson, FWS to EPA, 2/11/2008, available at http://www.epa.gov/oppfead1/endanger/litstatus/effects/atrazine/2008/fws-nonconcur.pdf, and EPA questions the basis for various conclusions in the Biological Opinion about adverse effects resulting from the use of pesticide products. *See, e.g.*, Memo from Stephen Bradbury, EPA, to NMFS, 8/16/2010, available at http://www.epa.gov/oppfead1/endanger/litstatus/effects/final-biop-ltr.pdf and Memo from Stephen Bradbury, EPA, to NMFS, 6/14/2011, available at http://www.epa.gov/oppfead1/endanger/litstatus/nmfs-draft-4-1comment.pdf. Some progress has been made in bridging these different risk assessment approaches. In at least one set of pesticide reviews, EPA adjusted its registration requirements in accord with these agencies' biological opinions. See Memo from Richard Keigwin, EPA, to NMFS, 7/10/2009 at http://www.epa.gov/oppfead1/endanger/litstatus/11-18-08-nmfs-biop.pdf. Additionally, the agencies collectively sent the NAS a set of questions regarding their differences. The National Academies, "Statement of Task: Ecological Risk Assessment under FIFRA and ESA," available at http://dels.nas.edu/resources/static-assets/best/miscellaneous/DELS-BEST-11-01-statement-of-task.pdf. There is some hope that the Academy can offer illumination that will begin to expedite future ESA consultations under FIFRA.

[150] They indicated that they were generally able to trace EPA's use of the available literature, understand the assumptions it was making, and could recreate the agency's analysis. In this regard, one industry stakeholder noted that "you can generally figure out how EPA used the science and got from one point to another." Interview with Staff of Exponent, an industry consulting group, Dec. 20, 2011. The public interest stakeholders generally agreed. For example, one public interest scientist said: "If you are a toxicologist, you can generally understand what EPA did with the science." Interview with Pesticide Research Institute (a public interest organization), Aug. 1, 2011.

exposure to hundreds of chemicals.[151] The assessments are not binding regulations, yet they can be and are used by EPA and other federal and state governments to support regulation. For example, IRIS is used to assess residual risk in the air toxics program, which in turn can lead to enforceable and costly emissions reductions from industry.[152] Thus, while there is no statutory mandate under which EPA prepares these assessments (and thus no mandated time frames or procedural or substantive directions), there is nevertheless a great deal of interest in these risk assessments from a wide range of stakeholders because of their use in various regulatory contexts.

Background of IRIS

In IRIS assessments, EPA attempts to identify a quantitative reference (roughly analogous to what lay persons call safe) dose for inhalation and ingestion for over 500 chemicals through a risk assessment.[153] The end goal for this reference dose is generally the "no observed adverse effects level," at which there is no biologically or statistically significant evidence of adverse effects in an exposed group as compared with a control group, divided by uncertainty factors to reflect extrapolation from animal data to humans, interindividual differences in response to exposure to a pollutant, etc.[154] This well-defined objective makes completing IRIS assessments more straightforward than completing pesticide assessments, which must consider a number of different targets (e.g., workers, consumers, bystanders, plants, animals, and ecosystems) and endpoints (lethal and sub-lethal) that occur through multiple routes of exposure (e.g., water, air, dermal).[155] IRIS assessments are also more straightforward than the NAAQS standard-setting assessments for the same reasons (although there are fewer exposure routes and endpoints in NAAQS as compared to pesticides).

Over the last fifteen years, EPA's IRIS assessments have been criticized on several grounds.[156] First, EPA's progress in producing assessments has been very slow, averaging between six to eight years per assessment.[157] In fact, in 2009 GAO listed the IRIS program as one of the areas of high risk inside government for waste and

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[151] EPA, "Integrated Risk Information System: What is IRIS," available at http://www.epa.gov/IRIS/help_ques.htm#whatiris.

[152] GAO, CHEMICAL ASSESSMENTS: CHALLENGES REMAIN WITH EPA'S INTEGRATED RISK INFORMATION SYSTEM 6 (Dec. 2011).

[153] More specifically, EPA is only assessing hazard and dose-response assessment and not exposure assessment and risk characterization, and does not attempt to develop risk management information.

[154] *See, e.g*, EPA, "Integrated Risk Information System: What is IRIS," available at http://www.epa.gov/IRIS/help_ques.htm#whatiris.

[155] Interview with EPA Staff, Office of General Counsel, Jan. 13, 2012.

[156] Some of these problems and EPA's reforms are further elaborated in Testimony by John Stephenson, Director of Natural Resources and Environment, GAO, Scientific Integrity: EPA's Effort to Enhance the Credibility and Transparency of its Scientific Process, June 9, 2009, available at http://www.gao.gov/assets/130/122677.pdf.

[157] Several stakeholders have criticized these delays, as has GAO in a series of reports. *See, e.g.,* GAO, CHEMICAL ASSESSMENTS, *supra* note 152, at 2-4 (summarizing this critical review), available at http://www.gao.gov/assets/130/122677.pdf.

mismanagement.[158] Second, IRIS assessments are subjected to two separate rounds of interagency review, with the scientific assessment sandwiched between these interagency stakeholder discussions.[159] Finally, the fact that OMB has historically managed the interagency review of IRIS assessment has led some to question the scientific credibility of the resulting assessments.[160]

In response to these concerns, Administrator Jackson made changes to the IRIS assessment decision-making process in 2009 with the dual goals of making the assessment process more transparent and reducing the time spent on IRIS reviews to less than two years per chemical.[161] Most significantly, as a result of these changes, EPA now takes the lead on the assessments; all written interagency comments must be submitted on the record.[162]

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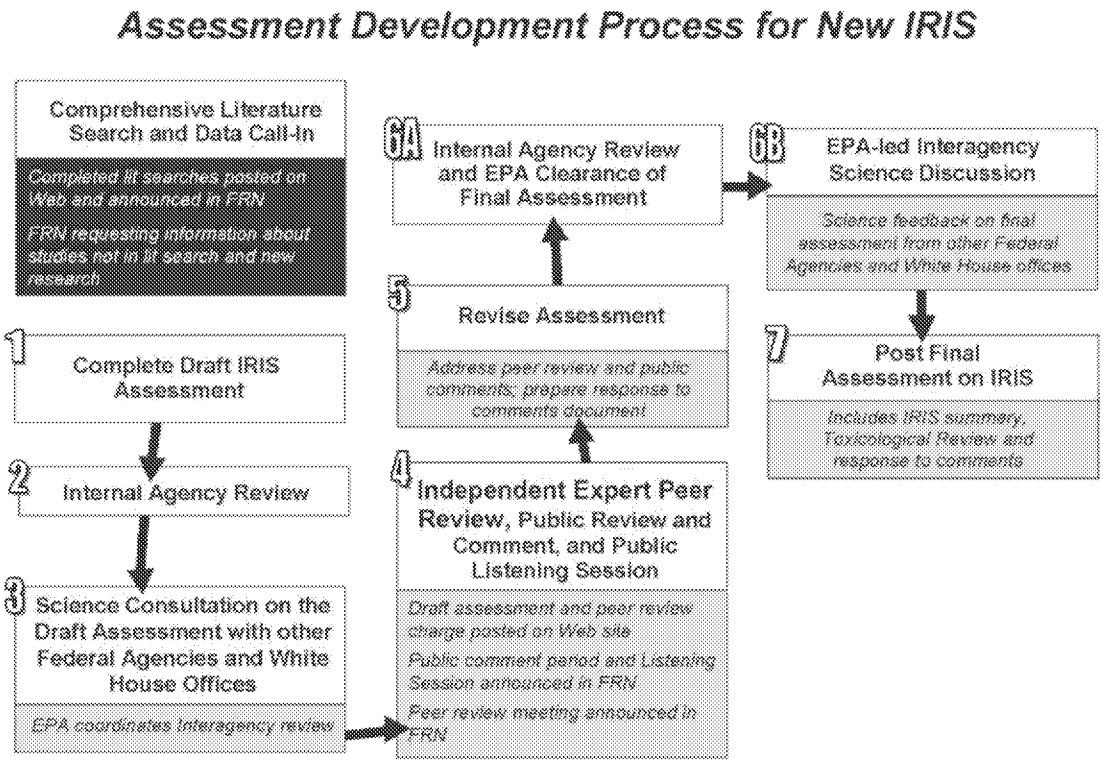
[158] *See* GAO, HIGH-RISK SERIES: AN UPDATE, GAO-09-271 (Jan. 22, 2009).

[159] *See, e.g.,* GAO, CHEMICAL ASSESSMENTS: LOW PRODUCTIVITY AND NEW INTERAGENCY REVIEW PROCESS LIMIT THE USEFULNESS AND CREDIBILITY OF EPA'S INTEGRATED RISK INFORMATION SYSTEM 57 (March 2008), available at http://www.gao.gov/assets/280/273184.pdf. There are also indications that inter-agency review has influenced the assessment process, potentially significantly in some cases. *See* GAO, CHEMICAL ASSESSMENTS, *supra* note 152, at Appendix III (describing on a chemical-by-chemical basis the role of agencies like OMB and DOD on EPA's assessments).

[160] *See* GAO, LOW PRODUCTIVITY, *supra* note 159, at 56-58 (describing and criticizing OMB's role in IRIS assessments).

[161] See Appendix E for the evolution of EPA's current IRIS process through four separate flow charts. The revised process focuses primarily on limiting interagency review to two discrete points in the process and requiring that all comments from the agencies be formal and on the record, including comments from OMB. See EPA, IRIS Progress report, Aug., 2011, at 4, available at http://www.epa.gov/IRIS/pdfs/irisprogressreport2011.pdf; GAO, CHEMICAL ASSESSMENTS, *supra* note 152, at 10. Time limits were also placed on these interagency reviews. Administrator Jackson also was able to double the IRIS budget and add 25% more staff to the program. IRIS Progress report, *supra,* at 6.

[162] *See, e.g., id.*



Steps to an IRIS Assessment

An IRIS assessment follows several separate steps:

1. *Identification of relevant scientific evidence.* The first task, assigned to a contractor, is to collect all of the scientific research available on the chemical being assessed.[163] After the contractor completes its work, EPA issues a Federal Register notice ("FRN" on flowchart) that announces the availability of this contractor-prepared literature search for a chemical undergoing an IRIS assessment and solicits from the public additional information relevant to the assessment.[164]

[163] *See, e.g.,* EPA, NCEA Policy and Procedures for Conducting IRIS Peer Reviews 4 (July 30, 2009), available at http://www.epa.gov/IRIS/pdfs/Policy_IRIS_Peer_Reviews.pdf.

[164] *See, e.g.*, EPA, Announcement of availability of literature searches for IRIS assessments; request for information, 76 Fed. Reg. 13402 (2011). EPA does not provide a deadline for the submission of this information. See literature assessments posted at http://cfpub.epa.gov/ncea/iris_drafts/recordisplay.cfm?deid=187215. The literature assessments are arranged by topic (e.g., chemical properties, toxicokinetics) but do not contain narratives; simply a listing of relevant studies alphabetized by author. The literature assessments also generally cite to published literature or literature with links, although some studies are not publicly available and presumably must be acquired via FOIA. EPA is currently attempting to "HERO-ize" the IRIS literature database to make it more accessible. Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Jan. 18, 2012.

2. *Preparation of the Draft Risk Assessment.* EPA then assembles an interdisciplinary team (paralleling the FIFRA process) that, with considerable help from the contractor, reviews the literature and prepares a draft hazard and dose-response assessment that can include development of a reference dose and reference concentration for non-cancer effects, and a weight of evidence classification and potency estimates for cancer effects. . To provide a more robust internal scientific review, the draft risk assessment is then subjected to a staff level agency review using staff from appropriate offices and disciplines.[165] Based on this review, modifications are made, and the final draft assessment is made a part of the public record.

3. *Interagency Review.* EPA leads a process of interagency review on the draft assessment,[166] which includes not only written comments placed on the record but other discussions by phone and meetings that are not on the record.[167] EPA sets deadlines for these comments, and the entire review is scheduled to last no more than 45 days.[168] EPA then revises the assessment based on this review.

4. *External Peer review and Public Comment.* After completing an open meeting on the assessment, EPA subjects the revised draft assessment to public comment and external peer review (the latter process is elaborated below).[169]

5. *Revised Assessment and Second Round of Interagency Review.* Based on input from the peer reviewers and the public, EPA revises the assessment and subjects it to another round of internal peer review within the agency and then

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While this first stage of the IRIS process – the assembly of relevant information -- is not as elaborate as the planning documents under FIFRA or NAAQS programs, this step does provide an initial opportunity for stakeholders and the general public to supplement the scientific record on a chemical. Note that GAO recommends that EPA give two years of advance notice of chemical review to provide private parties with opportunities to supplement the scientific record. GAO, CHEMICAL ASSESSMENTS, *supra* note 152. EPA has not yet implemented this step, but suggests it will. One can imagine both advantages and disadvantages to this advanced notice.

[165] The Chemical Manager, the Contractor, and these internal EPA reviewers are listed in the front of the draft assessment. *See, e.g.,* EPA, Toxicological Assessment of Acrylamide, March 2010, at xxi-xxiii, available at http://www.epa.gov/iris/toxreviews/0286tr.pdf.

[166] As mentioned, prior to 2009, OMB took the lead on soliciting interagency comments on the draft assessment and the entire inter-agency dialog, including changes, would be protected as deliberative process. *See* GAO, LOW PRODUCTIVITY, *supra* note 159, at 56-58.

[167] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Feb. 3, 2012. Other agencies comment not only on the draft assessment, but the draft charge to the external peer reviewers. *See, e.g.,* EPA, EPA's Integrated Risk Information System: Assessment Development Process, May 2009, available at http://www.epa.gov/iris/pdfs/2009_IRIS_PROCESS_FINAL_05_19_09.PDF.

[168] *Id.*

[169] *Id.*

to interagency review. Written comments by other agencies, including OMB, are again incorporated into the public record.[170]

6. *Final Assessment*. Based on these comments, EPA revises its draft assessment and posts a final assessment.[171]

Characteristics of IRIS Assessments

1. The Transparency of IRIS Assessments

IRIS assessments are viewed as being less transparent than the NAAQS. This may stem in part from the fact that IRIS assessments are technical and are often quite long. For example, one of the recent assessments – on dichloromethane – was over 550 pages.[172] More important than their length, however, is the perception that the discussions are quite technical and not framed in ways that expose the major assumptions and alternative choices for nonscientists.[173] At least some of EPA's NAAQS reports, by contrast, are purposely designed to communicate the results of EPA's complex risk assessments in a way that makes them accessible to non-scientists.

Concerns about the transparency of IRIS assessments were raised more concretely in a spring 2011 NAS review of the EPA's IRIS formaldehyde assessment. Specifically, the panel observed that the assessments were unduly lengthy and repetitive and that it was difficult to understand EPA's assumptions and analysis at a number of points.[174] The NAS panel did not, however, offer comments on the EPA's overarching process for developing assessments, such as its use of peer review, public comment, or interagency review.[175]

A recent GAO report conducted six months after release of the NAS formaldehyde report provides a more favorable account of EPA's efforts to make its assessments transparent: "it appears that EPA has begun to enhance the readability of its assessments by making changes that appear to be in line with the suggestions made by

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[170] *Id.*
[171] *Id.*
[172] *See* EPA, Toxicological Review of Dichloromethane (Methylene Chloride), Nov. 2011, at http://www.epa.gov/iris/toxreviews/0070tr.pdf.
[173] *See id.*
[174] *See* NAS, FORMALDEHYDE REPORT, *supra* note 1, at chapter 7.
[175] *Id.; see also* Section II.A., *supra.* In response to the NAS report, EPA agreed to make a number of changes to its future reviews to make them more transparent. *See, e.g.,* EPA, Progress Report, 2011, *supra* note 161, at 11. In future assessments, EPA plans to include a short (15 page) executive summary and short extended scientific summary (50 pages) to precede the longer report. Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Jan. 18, 2012. EPA also intends to include graphics and other summary devices borrowed from the ISA of the NAAQS process. *Id.* One of the first IRIS assessments in this new format is trichloroethene TCE. *Id.* EPA is also investigating adding an early stage of external peer review and is developing a standing committee that operates like CASAC. *See, e.g.,* GAO, CHEMICAL ASSESSMENTS, *supra* note 152, at 44 (Letter from Paul Anastas, Assistant Administrator of EPA to GAO, Nov. 22, 2011).

the National Academies."[176] The GAO report was skeptical of EPA's ability to complete assessments within two years, however.[177] Indeed, much of the GAO report documented continued delays in EPA's assessment that nearly doubled the time originally allocated to the projects.[178] GAO also indicated that EPA may be experiencing delays and turf battles with OMB over the interagency review process, including the Data Quality Act.[179]

2. *External Peer Review*

As mentioned, after the draft assessment has been subjected to the first round of interagency review, it is then subject to some form of external peer review in accord with the EPA's IRIS guidelines.[180] The form of the external peer review depends on the nature and extent of scientific evidence and the level of controversy.[181] External peer review can be conducted by the NAS for highly controversial assessments; EPA's Science Advisory Board (SAB) for medium controversy assessments (this usually is limited to about 4 chemicals/year);[182] and contractor-selected individualized peer review panels for the remaining IRIS assessments (which one EPA official estimated covered about eighty percent of the total assessments).[183] Regardless of which group conducts the peer review, there are minimal standards for those serving as reviewers, such as standard conflict of interest requirements adopted by the agency.[184] The peer review contractor sets up and manages this external peer review when it is not conducted by EPA's SAB or the NAS.[185]

Of these three peer review processes, the most problematic (and the most common, because the SAB has limited time to conduct reviews) is the review by external

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[176] *See, e.g., id.* at 22.

[177] GAO noted that although EPA attempts to set rigid deadlines initially for these assessments, it appeared to have limited authority to enforce them, particularly against other agencies. *Id.* at 18. In its recent report, GAO also identified continuing, significant delays in IRIS assessments, although GAO also questioned whether EPA's two year goal was feasible, at least for moderately complex assessments. *See* GAO, CHEMICAL ASSESSMENTS, *supra* note 152, at 27-28.

[178] *See, e.g., id.* at 8

[179] Apparently, several Data Quality Act correction requests have been filed on draft IRIS assessments. See generally Rena Steinzor et al., Corrective Lenses for IRIS (Oct. 2010), available at http://www.progressivereform.org/articles/IRIS_1009.pdf.

[180] See IRIS Flowcharts at Appendix E. Note that for IRIS assessments, there will always be external peer review. Presumably this ensures complete compliance with OMB's peer review guidelines since even potentially nonsignificant agency decisions will be subjected to external peer review.

[181] The Chemical Manager in consultation with the NCEA Director and other career managers determines which level of peer review is needed and prepares a publicly available peer review plan. *See, e.g.,* NCEA Policy Report, *supra* note 163, at 5-6.

[182] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Feb. 3, 2012.

[183] *See, e.g.,* GAO, CHEMICAL ASSESSMENTS, *supra* note 152, at 8.

[184] *See, e.g., id.* at 5-6 and 7-10.

[185] *See id.* at 7. For a list of "highly influential assessments" under IRIS, see EPA, Peer Review Agenda, at http://cfpub.epa.gov/si/si_public_pr_agenda.cfm.

reviewers selected by an EPA contractor.[186] Since the comments come from individual scientists who have not conferred (this process of independent review is used in the majority of cases where compliance with FACA appears too onerous), EPA finds that responding to the comments can be quite challenging.[187] It is not uncommon, for example, that one reviewer will offer suggestions on issues for which the other reviewers are silent (thus leaving open the possibility that the other reviewers would disagree). In addition, it is not uncommon for the reviewers to offer comments that conflict with one another or to have reviewers focus on completely different feature of the assessment.

These problems are exacerbated because interagency review occurs after external peer review and the other agencies can seize on comments that favor their own positions and insist they be addressed.[188] The large range of individualized external review comments thus provides fodder for even more debate and discussion during the second stage of interagency review, with little hope of expeditious closure.

Thus, in contrast to CASAC's consensus peer review process and role in "closing" debate in the NAAQS process, the EPA faces a relatively large set of scientific questions and queries that seem to actually expand rather than narrow with each round of interagency review and peer review. EPA staff suggests that risk assessments for chemicals like formaldehyde (recall this assessment was the subject of a critical NAS report) are unwieldy and unfocused in large part because of this decision-making process. By subjecting assessments to multiple rounds of stakeholder and interagency discussion and depriving the agency of the authority to effectively "close" the debate, agency reports can be filled with "facts that go nowhere" and "hypothetical analyses that don't need to be run."[189]

3. *Interagency Review*

EPA staff report that interagency review remains a significant feature of the IRIS process.[190] The GAO report and interviews indicate that other agencies take a keen interest in EPA's IRIS assessments because of their potential liability and compliance costs, which can hinge on IRIS values. As a result, interagency review generally comes much closer to supplementing the public comment from stakeholders rather than serving

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[186] For an example of external peer review comments, see the Consolidated Comments from External Peer Review for Acrylamide, posted (with other items) at http://cfpub.epa.gov/ncea/iris_drafts/recordisplay.cfm?deid=187729.

[187] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Feb. 3, 2012.

[188] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Feb. 3, 2012.

[189] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Feb. 3, 2012.

[190] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Feb. 3, 2012. .

as a form of expert peer review.[191] In contrast to public commenters and even external peer reviewers, however, EPA is expected – perhaps by OMB or as a matter of interagency courtesy – to provide responses to all of these federal agency comments and concerns in the assessment itself. Indeed, one EPA staff suggested that this need to respond to the extensive interagency comments causes EPA to drill down into details at the expense of dedicating staff resources to providing a strong, coherent draft on the most important issues.[192]

As the decision process outlined above indicates, EPA dedicates two separate windows of time to interagency review – one before EPA's draft assessment is released for public comment and peer review and a second after both peer review and public comment have concluded. In other agency decision-making processes, by contrast, interagency review is merged with the public comment process. Moreover, although OMB historically managed the interagency review process, EPA now manages this review, and the agencies' comments are placed in the record.[193] Considerable interagency review still takes place by phone and meetings, however, and these discussions are protected as deliberative and are not on the public record.[194]

4. *Access to the Literature*

EPA posts a list of references for each of the chemicals going through the assessment process. EPA also includes this reference list in its draft assessments, and in the most recent assessments even includes hyperlinks to each study cited in the reference list.[195] Although it is still being developed, EPA is attempting to build a web database of these studies, modeled after the NAAQS HERO database. When completed, this database will facilitate public and peer reviewer access to the literature that forms the basis for IRIS decisions.[196]

5. *Authorship and Attribution*

The EPA and EPA-contractor authors, EPA internal reviewers, and external peer reviewers are each listed by name in the first section of an IRIS assessment.[197]

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[191] Although some health agencies were initially involved in interagency discussions, they have largely dropped out of the process. *Id.*
[192] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Feb. 3, 2012.
[193] *Cf..,* GAO, CHEMICAL ASSESSMENTS, *supra* note 152, at 19 (NASA requested OMB to hold an interagency workgroup to discuss EPA's short comment deadlines).
[194] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Feb. 3, 2012. .
[195] *See, e.g.,* EPA, "IRIS Agenda and Literature Searches," avaialable at http://cfpub.epa.gov/ncea/iris_drafts/recordisplay.cfm?deid=187215.
[196] *See, e.g.,* EPA, "IRIS Progress Report 2011," Aug., 2011, at 6, available at http://www.epa.gov/iris/pdfs/irisprogressreport2011.pdf.
[197] *See, e.g.,* EPA IRIS Home Page, available at http://www.epa.gov/IRIS/ (providing links to recent assessments with this attribution in the front matter of the assessment).

Attribution and authorship rights are considered a basic feature of the IRIS assessment process.[198] EPA staff report that this authorship gives staff credit for their work while ensuring that they are accountable for the same. The list of internal and external reviewers also gives these scientists a stake in the assessment. While not formally stated, it is generally understood that, if the authors are not comfortable with the document, they can remove themselves as authors and simply be acknowledged as contributing to the report.[199]

2. The Department of Interior's Fish and Wildlife Service: Listing Endangered and Threatened Species and Designating Critical Habitat

Although the U.S. Fish and Wildlife Service (FWS) engages in a number of science-based decisions,[200] this study focuses entirely on the FWS' species listing and critical habitat determinations. Species and habitat designation decisions – the primary tools for preventing species extinction – were selected in part because they attract more public attention than other science-based decisions, and consequently more information is available on them. These decisions also appear to be fairly representative of other FWS science-based processes with respect to how science is incorporated into policy.[201]

The approach to science-policy decision-making used by the FWS to list species and critical habitat under the Endangered Species Act[202] is a very different approach from that of the EPA. As described above, the NAAQS reviews begin with staff-authored documents (with attribution to individual scientists in the acknowledgement section) that undergo multiple points of contact with the public and peer reviewers before the proposed rule is published.

The FWS's approach to species listing and habitat designations, by contrast, is much more abbreviated, limits authorship, and is less transparent. The FWS's assessment of the evidence, its technical analysis, and its decision in terms of applying the policy factors to the scientific evidence is contained in a single proposed rule that is drafted by staff and management working together. In addition, instead of listing individual scientists as authors, attribution for the technical analysis is generally given to

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[198] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Feb. 3, 2012.
[199] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Feb. 3, 2012.
[200] These include five-year reviews of threatened and endangered species, emergency listings, the development of recovery plans, interagency consultations regarding jeopardy, delisting species, and the development of habitat conservation plans.
[201] It should be noted that the OIG report of Julie MacDonald identifies irregularities across a number of different programs. *See generally* OIG, MacDonald Report, *supra* note 11. The discussions of transparency problems in the listing and habitat designation decisions thus seem to carry over to these other areas.
[202] 16 U.S.C. § 1533.

a field staff office.[203] Furthermore, virtually all internal drafts and assessments supporting this single decision document, with a few exceptions discussed below, are classified as deliberative privilege until the proposed rule is published.[204]

Endangered Species Act (ESA) Listings and Critical Habitat Determinations: The Law

The FWS and the National Marine Fisheries Service (NMFS) (which was not included in the study), are responsible for determining whether a species or subspecies is endangered or threatened under the Endangered Species Act.[205] If based "solely on the basis of the best scientific and commercial data available,"[206] a species is threatened or endangered with extinction (or likely to be so) "throughout all or a significant portion of its range," then the FWS must list the species.[207]

In making this determination, FWS is statutorily required to consider five factors, any of which can trigger listing.[208] Much like the NAAQS determinations, the FWS is prohibited from considering economic impacts in listing species.[209] The designation of critical habitat, however, must take economic and related considerations into account as required by statute.[210]

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[203] *See* Attribution subsection on FWS, *infra*.

[204] This truncated approach to listing is an explicit policy of the FWS. As the Director instructed staff in 2006:

> Premature release of drafts, scientific information or briefings can significantly undermine the confidence in the process by the public (through the Administrative Record) as well as our ability to have free and open debate on data interpretation. Failure to maintain a culture of "in Service scientific debate" prior to forming conclusions can significantly undermine the credibility placed with the science as we and the Department engage in policy or decision-making discussions. In order to ensure the integrity of this process, it is imperative that all documents, assessments and drafts remain inside the Service, except for discussions as appropriate with your recognized federal and state peers. Any requests for such release or premature briefings should be forwarded to this office for appropriate action.

Memorandum from FWS Director H.Dale Hall to FWS Directorate, Feb. 3, 2006, at page 1, available at http://www.fws.gov/endangered/esa-library/pdf/Science_in_DecisionMaking_2_3_06.pdf.

[205] The split jurisdiction is based on the different expertise of the staff. The FWS has jurisdiction over freshwater and land animals. NMFS has jurisdiction over marine and anadromous animals. See, e.g., http://www.nmfs.noaa.gov/pr/laws/esa/ (describing this jurisdictional split).

[206] 16 U.S.C. § 1533(b)(1)(A).

[207] *Id.* at § 1532(6).

[208] *Id.* at § 1533(a)(1)(A)-(E). The 5 factors are: a) "the present or threatened destruction, modification, or curtailment of its habitat or range;" b) "overutilization for commercial, recreational, scientific, or educational purposes;" c) "disease or predation;" d) "the inadequacy of existing regulatory mechanisms;" or e) "other natural or manmade factors affecting its continued existence." *Id.*

[209] *Id.* at §1533(b)(1)(A).

[210] *Id.* at § 1533(b)(2) (in making critical habitat designations the Secretary shall take into consideration "the economic impact, and any other relevant impact, of specifying any particular area as critical habitat").

Steps for Listing and Habitat Designations

A listing/habitat decision typically follows a three-step process, with each step published in the Federal Register:

1) *A 90-day decision on a petition.* Listing analyses are often triggered by citizen petitions that demand that a particular species be listed as a threatened or endangered species.[211] The FWS has only ninety days by statute to determine whether a petition presents "substantial scientific or commercial data that the petitioned action may be warranted."[212] The FWS's decision typically involves a relatively extensive scientific analysis that relies largely on evidence submitted by a petitioner.[213] The FWS details its analysis with respect to each of the five statutory factors and publishes its full analysis and decision in the Federal Register.[214]

2) *A 12-month finding that listing is not warranted or that proposes listing and solicits notice and comment on that proposal.* After completing the 90 day decision the FWS then has twelve months (by statute) to issue a proposed finding with regard to whether a listing is warranted.[215] The analysis in the 12-month finding (whether it be to list or not to list) is based on a comprehensive analysis of the best available evidence.[216] This analysis in the proposed rule is conducted by staff and management working together.

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[211] In recent years, the FWS reports that its priorities are largely driven by petitions filed by nonprofit groups for the simple reason that the agency's resources are very limited and the agency's response to petitions is statutorily required. Interview with FWS Staff, Endangered Species Program, Jan. 9, 2012.

[212] 16 USC § 1533(b)(3)(A); 50 CFR § 424.14(b). This is a lighter evidentiary standard than a conclusion (during the next review) that listing is ultimately warranted based on the "best scientific and commercial data" standard. *Id.* at § 1533(b)(1)(A).

[213] In ruling on this petition, the FWS relies primarily on "the information provided by the petitioner", FWS, Endangered Species Petition Management Guidance 10 (July 96), available at http://www.nmfs.noaa.gov/pr/pdfs/laws/petition_management.pdf, with attention to ensuring the reliability of that information, *id.* at Appendix A, but it also considers "information already available in the Service's files." *Id.* at 10.

[214] 16 U.S.C. § 1533(b)(3)(C)(ii). For a sample, see FWS, Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Humboldt Marten as Endangered or Threatened, 77 Fed. Reg. 1900, 1904-08 (2012) (undertaking this analysis). At this point, the FWS will also include a notice in the same published decision that solicits from the public information on the species and its habitat, often including very specific questions for which it seeks information. *Id.* at 1900-01. Much like the approach in all the other agencies, this initial solicitation of information is intended to ensure that the agency's files are as complete as possible.

[215] 16 U.S.C. § 1533(b)(5)(A)(i). A six month extension can be justified based on "substantial disagreement regarding the sufficiency or accuracy of the available data." *Id.* at § 1533(b)(6)(B)(i). The FWS has been held to these timelines in litigation by nonprofit group. For a list of judicially imposed deadlines for critical habitat designations, see http://www.fws.gov/endangered/esa-library/pdf/ch-actions.pdf.

[216] 16 U.S.C. § 1533(b)(1)(A).

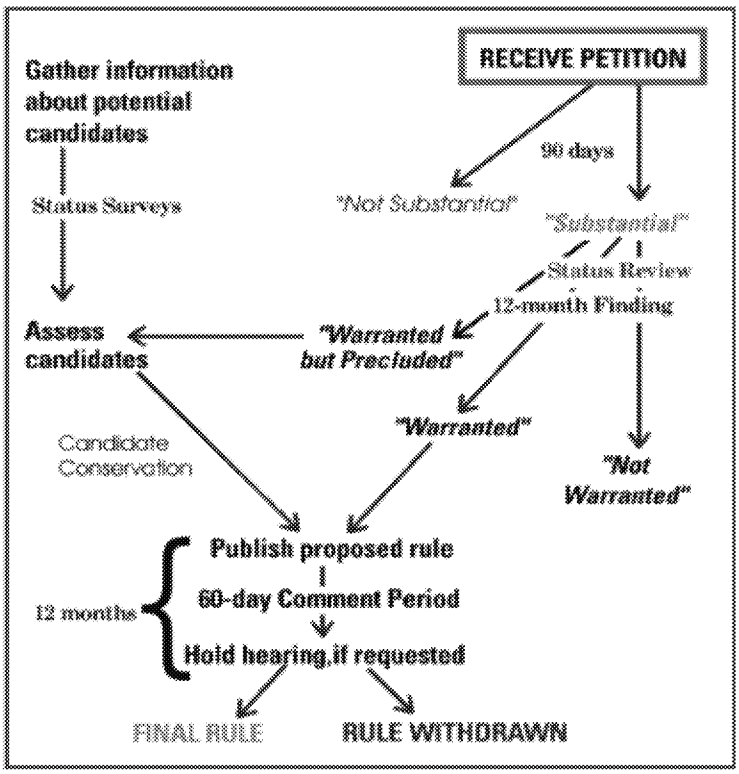
If the FWS concludes that listing is warranted,[217] then its decision takes the form of a proposed rule upon which it solicits public comment. As described below, with the help of a contractor, the FWS also solicits external, independent peer review on its proposal. In the same proposed rule, the FWS is required by statute to propose the designated critical habitat for the species.[218] Although the listing proposal does not require OMB review, the critical habitat designation must be cleared by OMB.[219]

3) *A final rule*. Like the proposed rule, the final rule is the result of a collaboration between staff and management within the FWS and the Department. Also like the proposed rule, for critical habitat designations the final rule must be cleared by OMB.

[217] If the FWS concludes that listing is not warranted or is warranted but precluded, the FWS issues its decision as a finding without notice and comment. A negative decision (i.e., "not warranted") is considered a final action subject to appeal. *Id.* at § 1533(b)(3)(A). The FWS will conclude that a listing is not warranted if "convincing data on biological vulnerability and threat are not available to support a proposed to list." Petition Guidance, *supra* note 213 at 13-14. By contrast, listing is warranted when there is "convincing evidence" in its favor. *Id.* There is also a third, "warranted but precluded" category in cases where there are inadequate resources to list relative to other, higher priority species. *Id.* Species falling into this category are reconsidered annually. *Id.*; *see also* 16 U.S.C. § 1539(j)(2)(C)(i). For the priority system that the FWS has developed, see FWS, 1983 Priority Guidelines, 49 Fed. Reg. 43098 (1983). The cutoff for where how these priority rankings affect whether a species is in the warranted but precluded category are variable and depend in part on workload and resources. See Stanford Environmental Law Society, The Endangered Species Act 47-49 (2001) (describing this feature in more detail with examples). The statute is read to create a presumption in favor of listing. Interview with FWS Staff, Endangered Species Program, Jan. 9, 2012.

[218] The critical habitat designation includes areas considered necessary to protect survival at status quo levels and does not include what may be necessary for recovery. 16 U.S.C. § 1532(5); 50 C.F.R. § 424.12(b). As mentioned, critical habitat designations must include economic considerations to the extent that the habitat extends beyond a biologically determined "core" area essential to prevent extinction. 16 U.S.C. § 1533(b)(2). Although habitat designations are required to be issued with the species listing decisions, the statute does allow the FWS to delay the decision if the designation at the time is "not determinable" and to avoid it altogether if the designation is "not prudent." *Id.*

[219] Interview with FWS Staff, Endangered Species Program, Jan. 9, 2012.



From FWS, Listing a Species as Threatened or Endangered, June 2011.

General Characteristics of Listing and Habitat Designations

1. Public access to technical assessments supporting FWS decisions

As mentioned, the FWS follows an abbreviated process for incorporating science in which both management and staff work together to produce the analysis that supports a decision.[220] The proposed rule and accompanying technical documents that comprise the

[220] An email from Dale Hall, the FWS Director in 2006, posted on the FWS site in its ESA policy library fleshes out the agency's expectations regarding this collaboration between staff and management in formulating listings and other decisions in the FWS. *See* email from Dale Hall to FWS Directorate and Deputies, dated Feb. 8, 2006, available at http://www.fws.gov/endangered/esa-library/pdf/Directions_for_Directorate.pdf. In listing and related decisions, the Director will become involved early in the process. "[A] written briefing" to the FWS director is required just at the point that the "field is beginning to write the document". "The real value here is to give advice and suggestions to the field so they can assist in providing information in the draft to answer expected questions." Hall's directions conclude with:

> "(6) The discussions between you in the A/S [Assistant Secretary] office and me will focus on policy direction or policy decision-making. Identification of other weaknesses in the draft are welcomed, but will be given to me as the responsible person in the Service to make necessary corrections or improvements. . . . This will be tricky until we get better at it, but we will keep working it until a solid process emerges."

In this directive, Hall is attempting to separate and protect the field's scientific analysis from the policy decisions made in the Assistant Secretary's office based on that analysis. See OIG MacDonald Report, *supra* note 11, at 15 (citing FWS employee as saying that Hall drew a "line in the sand" that

listing and critical habitat packages originate with field staff but are then reviewed and revised by a number of regional and Washington offices and ultimately are sent to the DOI Office of the Solicitor, the FWS Director, and the Assistant Secretary for Fish, Wildlife, and Parks.[221]

In theory, the extensive review of the proposed rule by management creates opportunities for the scientific analysis to be altered, although whether or how much this occurs cannot be determined. An IG report produced to investigative the misuse of authority by Assistant Secretary Julie MacDonald did criticize the FWS for not having guidelines relating to how scientific evidence and technical analysis should be incorporated into decisions during this internal review process.[222] In the case of critical habitat designations, for example, the IG identified 14 different versions of a FWS policy that purported to guide critical habitat designations over a three year period (between 2003 and 2006).[223] Because the guidelines to FWS personnel on how to assess and report on scientific evidence are so ambiguous, the IG concluded that the transparency and scientific rigor of the FWS's supporting analyses were at risk of being compromised.[224]

Although the internal deliberations of the FWS are protected as deliberative process before the proposed rule is published, after the rule is published, the FWS does typically make the administrative record available from its field office.[225] A FWS staff

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MacDonald could not change the science coming from the field). To the extent that this approach prevails, it would seem to improve the scientific integrity of the decision-making within the Department. Yet the informality of Hall's directions (an email) leaves open the possibility that future FWS Directors may take the opposite tack. [Perhaps this could form the basis of a recommendation to FWS? Perhaps they should formally embrace this policy.] The Hall email openly concedes in fact that "There is almost never one clear answer to ESA, FERC or other questions, and our objective is to ensure we have as clear of an understanding of the range of options as we can have." Hall, *supra.* Yet how those range of options is to be expressed as against the evidence and interpretation of that evidence is not spelled out.

[221] Interview with FWS Staff, Endangered Species Program, Jan. 9, 2012.

[222] Assistant Secretary MacDonald allegedly bullied staff and manipulated the scientific record in order to undermine recommendations for listing; as a result of her activities, a number of proposals for listing were dropped. In investigating her case, the Office of the Inspector General concluded that the FWS's own lack of guidelines was partly to blame for her ability to abuse this authority. OIG MacDonald Report, *supra* note 11, at 7. Specifically, the OIG found:

> While the ESA affords the Secretary great discretion in several areas – exclusions of habitat being one example – the absence of policy guidelines in exercising that discretion has resulted, in MacDonald's case, in a wholesale lack of consistency, a process built on guess-work, and decisions that could not pass legal muster. [Indeed, the resulting ambiguity created "an enormous policy void, which MacDonald was able to readily exploit."] This dearth of policy and guidance seems less than coincidental. For many years, through several administrations, this appears to be an area of intentional failure to clarify, in order to maximize the agenda *du jour*.

OIG MacDonald Report, *supra* note 11, summary letter at 2, available at http://www.lb9.uscourts.gov/webcites/10documents/HomeBuilders_conflict.pdf

[223] OIG MacDonald Report, *supra* note 11, at 130.

[224] *Id.*

[225] No documents, except for a possible bibliography and two critical habitat reports, required under NEPA and Executive Order 12866, are posted online. [It is not quite clear how Executive Order 12,866 requires this. Please elaborate.] One of the two critical habitat reports is a supporting environmental assessment

member indicated, however, that there can be considerable variation in how these records are prepared. To the extent that there is guidance to assist with this task, it is badly dated.[226] Thus some administrative records that support listing will be carefully prepared to include the full range of documents that led up to the FWS' proposed rule, including significant changes and discussions.[227] Other administrative records may be less comprehensive, mostly because drafts are not saved or collected and the record is generally prepared at the end of the process.[228] A staff member also indicated that the agency's approach to claiming deliberative process protections for internal documents has varied over time and generally lacks clear guidance.[229]

2. *External Peer Review*

The FWS voluntarily solicits independent peer review relating to its proposed listing decision from at least three independent specialists.[230] While the reviewers are invited to comment on any issues in FWS's analysis, they are asked in particular to provide opinions on the species' taxonomy and biology.[231]

The FWS's decision to solicit external peer review on its species listing decisions is the result of formal FWS policy, but it is not legally required.[232] Perhaps in part because it is discretionary, FWS's decision to use external peer review for listings, as well as its selection of reviewers, has been controversial. The FWS's actual selection of reviewers in individual cases has been criticized by members of Congress, who, for example, argue that the FWS selects reviewers in ways that stack the deck in favor of a

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that explores the consequences of the critical habitat designation, required under NEPA. The second is a draft economic assessment of alternative critical habitat designations. The economic assessment of critical habitat designations not only informs the Secretary regarding the benefits and costs of alternative habitat designations as required by the ESA, but also allows the Service to address the requirements of Executive Orders 12866 and 13211, and the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). Both of these additional assessments are made available, with the proposed rule, for public viewing and are considered part of the larger package subjected to notice and comment. It is not clear whether they must also pass through the same proposed rule review chain or whether they are considered the equivalent of staff documents that support a larger critical habitat designation.

[226] Interview with FWS Staff Member, Field Office, Feb. 15, 2012.

[227] *Id.*

[228] *Id.*

[229] *Id.*

[230] *See, e.g.,* Joy Nicholopoulos, *The Endangered Species Listing Program*, 24 ENDANGERED SPECIES BULLETIN, Nov./Dec. 1999, at 5, 9.

[231] *Id.* at 9.

[232] FWS, Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Violations, 59 Fed. Reg. 34270 (1994). A search through past FWS proposals reveals that this peer review is also occasionally sought for critical habitat designations. See FWS Letter soliciting external peer review on the Gopher Frog, Nov. 11, 2011, Document Number FWS-R4-ES-2010-0024-0024, available at regulations.gov.

desired outcome.[233] Other stakeholders question whether peer review is even necessary at all and have expressed concern that it might reduce the FWS's discretion, delay the listing process, and tax the limited resources of staff.[234] According to FWS officials, however, peer review has been helpful and provides a robust check on the FWS's scientific and technical analyses.[235] This peer review can occasionally alter the FWS's analysis in substantive ways.[236]

3. *Attribution and the Release of Staff Reports*

Attribution for the FWS's technical analysis is given to a field office at the end of the Federal Register publication (e.g., "The primary authors of this notice are the staff members of the [fill in the blank] office."). According to FWS staff, there is no individualized attribution or scientific authorship for the analyses that support the proposed rule, as is the case at EPA.[237] This is likely due in large part to the collaborative nature of the FWS's analysis and the fact that it is reviewed and edited by multiple offices as a draft proposed rule.[238]

4. *Bibliography and Public Access to the Supporting Literature*

The extent to which the bibliographic information on which decisions are based is publicly available is inconsistent. For example, while references in abbreviated form are cited in the FWS's Federal Register preamble, the full bibliography is not published in the proposed rule and is not always posted on regulations.gov.[239] In cases when the bibliography is not posted, commenters are invited to contact the designated contact person in the appropriate field office. It appears that external peer reviewers must follow this same process to acquire the literature supporting the FWS's analysis.[240]

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[233] Interview with FWS Staff, Endangered Species Program, Jan. 9, 2012. [Can we cite to something other than an interview for this point? Couldn't we cite to the legislative record or some other source to document this criticism?]

[234] *See* STANFORD ENVIRONMENTAL LAW SOCIETY, *supra* note 217, at 53 (reporting on this).

[235] Interview with FWS Staff, Endangered Species Program, Jan. 9, 2012.

[236] *Id.* The FWS ultimately revises the proposed rule and reopens public comment after explaining the changes it made in response to peer review. *See, e.g.*, FWS, Endangered and Threatened Wildlife and Plants: Designation of Critical Habitat for Mississippi Gopher Frog, 77 Fed. Reg. 2254 (2012).

[237] Interview with FWS Staff, Endangered Species Program, Jan. 9, 2012.

[238] *Id.*; Interview with FWS Staff Member, Field Office, Feb. 15, 2012.

[239] *See, e.g.*, Proposed Endangered Status for the Chupadera Springsnail (Pyrgulopsis chupaderae) and Proposed Designation of Critical Habitat, 76 Fed. Reg. 46218, 46233 (2011) (guiding readers to regulations.gov for the bibliography).

[240] In at least one solicitation to peer reviewers pulled from a docket, the reviewers were given only the published federal rule. *See, e.g.*, Letter to Peer Reviewers for the Gopher Frog, *supra* note 232, at 2 (advising reviewers that "[a] list of the References Cited in the proposal- Copies of the references cited are available from our files if you wish to review them.").

In the bibliographies that were available online,[241] only some of the cited literature was published. Other references included unpublished studies and internal memoranda. Presumably these documents would also need to be requested from the field office that serves as the designated contact point for listings.[242]

5. The Role of OMB and Interagency Review

As discussed, OMB does not review listing decisions,[243] but decisions regarding critical habitat designations do require OMB clearance.[244] As with OMB's review of EPA's proposed rules, the internal deliberations are considered deliberative process and are therefore privileged, although the changes that result from formal review are required by Executive Order 12866 to be disclosed to the public.[245] Note that while critical habitat designations are often published in the same proposed rule as species listings, these two elements of the rule are discussed separately in the preamble. Therefore, it is presumably not difficult for these two types of decisions to be separated for the purposes of OMB review.

3. A Birds' Eye View of the Nuclear Regulatory Commission's Incorporation of Science into its Regulatory Decision-making

The Nuclear Regulatory Commission (NRC) provides yet a third point of contrast to the FWS and EPA regulatory programs. As discussed in Section II, *supra,* the primary reason that the NRC was selected for study is that the NRC is independent and thus presents a slightly different regulatory process. Rather than responding to Executive Branch appointees and undergoing mandatory OMB clearances (as well as other methods of coordination), the NRC is governed by a five member board of Commissioners appointed by the President for five year, staggered terms. No more than three of the Commissioners may be affiliated with the same political party.[246] As a consequence, the NRC is a bipartisan body. The internal politics and external mechanisms of pressure at the NRC are thus different than at an Executive Branch agency.

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[241] *See, e.g.*, Reference List for the Chupadera Springsnail, Document ID FWS-R2-ES-2011-0042, available at regulations.gov.

[242] Given the limited timeframe and resources of the FWS, it might not be possible to make supporting documents more readily available. However, in a policy email from Dale Hall to the FWS Directorate, *supra* note 220, point 3 at page 1, Hall indicates that: "If literature cited in the document is in electronic form in the field office, that will be forwarded with the draft [to the Director]. If not, we agreed that an intern could be assigned to find the citations and either print them off or put them in electronic form." It is not clear why this internally collected research cannot be made available in the docket, but this was not asked of the interviewees in this study.

[243] Interview with FWS Staff, Endangered Species Program, Jan. 9, 2012. Officials in FWS were not sure why OMB refrains from reviewing species listing decisions.

[244] *Id.*

[245] *See infra* Section III.A.4.

[246] See Energy Reorganization Act of 1974, Sec. 201.

The NRC's technical decisions are generally based on more limited scientific information than the information upon which EPA and the FWS typically rely. For example, the NRC regulatory issues often concern technical issues and modeling assumptions that require considerable engineering expertise.[247] Grounded operational experience is also viewed as a necessary disciplinary perspective to include on most expert advisory groups because the technical issues can be closely tethered to specific, applied issues and challenges.[248]

Finally, NRC's statutory mandates generally do not impose many deadline-forcing requirements on NRC. Consequently, the NRC is not subject to the deadline pressure that appears to be a significant factor in EPA's NAAQS and pesticide reviews and in FWS's ESA determinations.

Roland Frye, a Senior Attorney at NRC, was conveniently on detail to ACUS during the preparation of this report. Mr. Frye contributed most of the information detailed in this and the next section on NRC. Specifically, Mr. Frye conducted all of the interviews with the NRC personnel and contributed virtually all of the documentation and other substantive information used in this report on informal rulemakings and on NRC's scientific integrity programs. Mr. Frye also prepared two stand-alone white papers on NRC's use of science advisory bodies and its use of expert elicitation, which are available in Appendices A and B. Any errors in transcribing and analyzing this information for purposes of the report, however, are attributable solely to the author.

a. Informal Rulemakings

The the NRC engages in a diverse set of rulemakings and licensing decisions, but most of the NRC's regulatory activities involve some form of oversight or restrictions on nuclear operations, such as waste disposal, worker safety, or operations and maintenance.[249] This study placed primary, but not exclusive, emphasis on examining NRC's informal rulemaking projects (particularly in nuclear material and waste rulemakings) so that these processes can be compared with EPA's NAAQS review process.[250]

The NRC's actual process or flowchart for undertaking its technically-based, informal rulemakings is not explicated in the NRC fact sheets, on the NRC's webpage, or even in technical documents or directives (at least that the author could find). Like the other agency programs studied in this report, the NRC's process for promulgating

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[247] Interview with the NRC Staff, Office of General Counsel, Nov. 15, 2011.
[248] *Id.*
[249] See first four horizontal tabs on NRC's home page at U.S. NRC, last visited on February 2, 2012, available at http://www.nrc.gov/ (list).
[250] Since the processes examined in the FWS and other program offices of EPA were relatively product- or issue-specific (e.g., akin to a licensing decision), the NRC's broader rulemaking orientation also provides a more diverse view of rulemaking activities in different agencies.

technical rules was reconstructed from interviews with staff and stakeholders, the synthesis of various documents, and sampling ongoing and concluded rulemakings posted on several tabs of the NRC website.[251] While the process outlined below for technical rulemakings may not describe all the NRC rulemakings, it appears to be the general approach used in most cases.

In general, NRC's informal rulemaking for technical rules proceeds as follows:

1. *Trigger for Action.* The need for a rule or guidance is generally triggered by a statute or by Commission priority, a staff recommendation, a recommendation from the Advisory Committee on Reactor Safeguards (ACRS), or a petition from the outside.[252] In some cases, the decision to proceed with a regulatory project, in and of itself, may result from give-and-take between staff and the Commission.[253]
2. *Possible Workshop.* Staff or the Commission occasionally suggest a stakeholder workshop early in the rulemaking process. These workshops are public and in some cases are lengthy in duration and broad in scope.[254] In the workshops, the staff solicits information and guidance on the rulemaking project.
3. *Staff Analysis.* The staff then provides the Commission with one or more technical papers (called a Commission or SECY paper)[255] that offer analysis and sometimes

[251] The following rulemakings were selected from the NRC's website, in part because they are currently ongoing or recently concluded: a) a revision of 10 CFR Part 61 (low level nuclear waste), see U.S. NRC, Potential Revision of 10 CFR Part 61, last updated on April 6, 2011, available at http://www.nrc.gov/about-nrc/regulatory/rulemaking/potential-rulemaking/potential-part61-revision.html#background; b) U.S. NRC, Specific Analysis Rulemaking (Unique Waste Streams), last updated on June 20, 2011, available at http://www.nrc.gov/about-nrc/regulatory/rulemaking/potential-rulemaking/uw-streams.html; c) rulemaking regarding uranium mill tailings, see U.S. NRC, Docket Folder Summary, No. NRC-2010-0075, available at http://www.regulations.gov/#!docketDetail;dct=SR%252BFR%252BPR;rpp=10;po=0;D=NRC-2010-0075; d) U.S. NRC, Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria, No. NRC-2010-0012, available at http://www.regulations.gov/#!docketDetail;rpp=10;so=ASC;sb=postedDate;po=0;D=NRC-2010-0012; e) U.S. NRC, Proposed Security Rulemaking for Independent Spent Fuel Storage Installations, last updated on September 16, 2011, available at http://www.nrc.gov/about-nrc/regulatory/rulemaking/potential-rulemaking/isfsi-security.html; f) U.S. NRC, Options to Revise Radiation Protection Regulations and Guidance, April 9, 2011, available at http://www.nrc.gov/about-nrc/regulatory/rulemaking/potential-rulemaking/opt-revise.html.

[252] Interview with NRC Staff, Nov. 2011. A more extensive discussion of the role of the ACRS appears below in section III.a.3.c.

[253] Interview with NRC Staff, Office of General Counsel, Nov. 15, 2011.

[254] *See, e.g.*, U.S. NRC, Potential Revision of 10 CFR Part 61, last updated on April 6, 2011, available at http://www.nrc.gov/about-nrc/regulatory/rulemaking/potential-rulemaking/potential-part61-revision.html#background (includes discussion of public workshop); U.S. NRC, Site-Specific Analysis Rulemaking (Unique Waste Streams, last updated on June 20, 2011, available at http://www.nrc.gov/about-nrc/regulatory/rulemaking/potential-rulemaking/uw-streams.html (includes a public meeting at the beginning of the process); U.S. NRC, Options to Revise Radiation Protection Regulations and Guidance, last updated on April 9, 2011 available at http://www.nrc.gov/about-nrc/regulatory/rulemaking/potential-rulemaking/opt-revise.html (same).

[255] *See, e.g.*, NRC, Commission Papers (SECY), available at http://www.nrc.gov/reading-rm/doc-collections/commission/secys/. It is not clear from NRC's website whether "SECY" is an acronym or simply the proper name for the papers.

options for the regulatory project in question.[256] SECY papers used to be extremely long and detailed. As these staff analyses generally grew in size and became increasingly complicated, the Commission demanded that they not exceed ten pages.[257] SECY papers now are relatively short and to the point, although the technical rulemakings often include multiple attachments.[258] In some cases, documents are also included in the record that either precede or follow issuance of the SECY papers.[259]

4. *Draft proposal.* If the Commission decides to move forward, it directs the staff to draft a proposed rule and also a preamble, which is termed a "Statement of Consideration."[260] This draft Statement of Consideration is deliberative and the Commission therefore does not, at least initially, make it available to the public.[261] The proposed rule and its accompanying Statement of Consideration are circulated internally to the Office of General Counsel (OGC) for legal concurrence.[262] Once OGC states that it has "no legal objection" to this package of documents, they are then submitted to the Commissioners, who may edit and revise the documents. The Commissioners' alterations to the draft proposed rule and Statement of Consideration are also considered part of the deliberative process and are therefore exempt from public release, although the Commissioners' decisions on staff papers are made public.[263]
5. *No OMB Clearance.* Because the NRC is an independent agency, the proposed rule does not need to be cleared through OMB. OMB's role is limited primarily to its statutory responsibilities in authorizing information collection requirements under the Paperwork Reduction Act[264] and in determining whether an NRC

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[256] Interview with NRC Staff, Office of General Counsel, Nov. 15, 2011. For samples, *see supra* note 251. *See also* U.S. NRC, Proposed Security Rulemaking for Independent Spent Fuel Storage Installations, last updated on September 16, 2011, available at http://www.nrc.gov/about-nrc/regulatory/rulemaking/potential-rulemaking/isfsi-security.html; U.S. NRC, Docket Folder Summary, No. NRC-2010-0012, available at http://www.regulations.gov/#!docketDetail;rpp=10;so=ASC;sb=postedDate;po=0;D=NRC-2010-0012; U.S. NRC, Docket Folder Summary, No. NRC-2010-0075, available at http://www.regulations.gov/#!docketDetail;dct=SR%252BFR%252BPR;rpp=10;po=0;D=NRC-2010-0075.
[257] Interview with NRC Staff, Office of General Counsel, Nov. 15, 2011.
[258] *Id.*
[259] *See, e.g.,* US. NRC, Docket Folder Summary, No. NRC-2011-0012, available at http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=10;so=ASC;sb=postedDate;po=0;D=NRC-2011-0012; U.S. NRC, Docket Folder Summary, No. NRC-2010-0075, available at http://www.regulations.gov/#!docketDetail;dct=SR%252BFR%252BPR;rpp=10;po=0;D=NRC-2010-0075; U.S. NRC, Docket Folder Summary, No. NRC-2010-0012, available at http://www.regulations.gov/#!docketDetail;rpp=10;so=ASC;sb=postedDate;po=0;D=NRC-2010-0012.
[260] Interview with NRC Staff, Nov. 2011.
[261] *Id.*
[262] *Id.*
[263] Statement of NRC Staff, Feb. 1, 2012. For the Commission decisions, see the Staff Requirements Memoranda recording these decisions, available by data at http://www.nrc.gov/reading-rm/doc-collections/commission/srm/.
[264] 44 U.S.C. § 3501, et seq.

regulation constitutes a "major rule" under the definition section of the Congressional Review Act.[265]

6. *Notice and comment and possible external peer review.* The proposed rule is published in the Federal Register and is subject to notice and comment. It might also be subject to external peer review, particularly if it falls under the jurisdiction of one of the Commission's expert advisory panels.
7. *Final rule.* The development of the final rule follows an internal review process very similar to the one outlined in the steps above and is published in the Federal Register.[266]

The Availability of Initial, Staff Analyses

Most of NRC's technical analyses are contained, or at least summarized, in the SECY papers, which provide the equivalent of EPA's staff analyses.[267] In virtually all cases, except when the papers expose personnel, proprietary information, or security

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[265] 5 U.S.C. § 804(2). NRC's Office of General Counsel report that "neither OMB nor the White House has served as a general-purpose editor/reviewer of NRC regulations (in contrast to their review of regulations from Executive agencies). Nor does OMB resolve disputes between the NRC and other agencies with respect to the issuance of NRC regulations." Statement of NRC Staff, OGC, Jan. 25, 2012.

[266] Interview with NRC Staff, Nov. 2011.

[267] The importance of these staff analyses as providing a backdrop and information foundation to Commission decisions is reinforced by a decision-making structure that attempts to maintain a relatively strict separation between the Commissioners and the general NRC staff (those staff who do not serve Commissioners directly). While there is still give-and-take between staff and Commissioners, NRC processes are relatively hierarchical and arranged to generally make it clear where staff analyses leave off and the Commissioner decision-making begins.

There have been some interactions that potentially blur these traditionally distinct roles of staff versus the Commissioner, however. Paralleling the Julie MacDonald scandal in DOI, see supra, there are current allegations that Commission Chairman Jackzo pressured staff on at least one occasion to withhold and/or "clear" a SECY paper through him before the paper could be shared with the other Commissioners. While the staff papers at issue were not concerned exclusively with technical issues, the unorthodox process of intervening in communications between the staff and other Commissioners set off a firestorm within NRC. As discussed below, the noncurrence process brought some of these staff-management disagreements to light. These allegations of interference have triggered an OIG report, *see* NRC OIG, "NRC Chairman's Unilateral Decisoin to Terminate NRC's Review of DOE Yucca Mountain Repository License Application," Report No. 11-05 (Jun. 6, 2011); a congressional hearing, *see* House Committee of Oversight and Government Reform, "Hearing on 'The Leadership of the Nuclear Regulatory Commission'", Dec. 14, 2011, available at http://oversight.house.gov/index.php?option=com_content&view=article&id=1536:12-14-2011-qthe-leadership-of-the-nuclear-regulatory-commissionq&catid=12&Itemid=1; an investigative report authored by Congressman Darrell Issa (R-CA), *see* Majority Staff Report, U.S. House of Representatives, Committee on Oversight and Government Reform, "A Crisis of Leadership" (Dec. 13, 2011), and media coverage. A report by Congressman Ed Markey (D-MA) attempts to rebut the allegations. *See* Edward J. Markey, Regulatory Meltdown (Dec. 9, 2011). See also Appendix D, nonconcurrence statement on Yucca Mountain; Press Release, Barbara Boxer, U.S. Sen., Boxer Opening Statement on NRC Hearing, December 15, 2011, available at http://epw.senate.gov/public/index.cfm?FuseAction=Majority.PressReleases&ContentRecord_id=426c2a48-802a-23ad-432a-c3b0a1258452&Region_id=&Issue_id.

information, SECY papers are available to the public.[268] Outsiders interested in the NRC's policies can thus track the scientific assumptions and use of the technical literature in virtually all of the NRC's rulemakings by comparing the staff report (and potentially other technical documents) with the proposed rule. The NRC also generally includes other technical documents and reports in its public docket before the proposed rule is published.

Attribution and Authorship

The NRC does not appear to give attribution or authorship rights to the staff preparing the staff SECY papers. A review of SECY papers in recent years reveals that the papers are signed by higher level supervisors, without acknowledgement or attribution to staff.[269] Presumably this practice is intended to signal to the Commissioners that the papers have been reviewed rigorously within the agency and approved (and hence) signed by a higher-level supervisor. Perhaps like the FWS, the tendency to resist staff attribution is thus balanced against the need to provide the decision-makers with a document that formally represents the agency's final technical position on a particular matter. It is not clear, however, whether listing the individual staff as contributors or in an acknowledgement section would impede these goals. At the same time this gesture towards authorship could produce countervailing benefits, a possibility that is considered again in the analysis section.

Availability of the Supporting Literature

To supplement the references cited in the preamble of the proposed rule, the NRC maintains a public database (Agency wide Documents Access and Management System or ADAMS) that is available on its website. The documents cited in the literature reviews for SECY Papers and other technical documents are, according to the NRC staff, generally available in this docket or on ADAMS.[270]

b. Overview of the NRC's Licensing Renewal Decisions

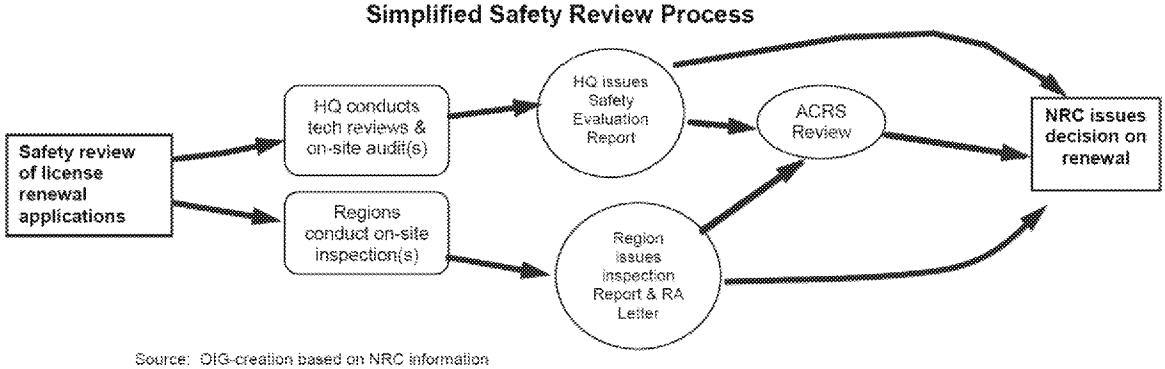
Public interest stakeholders identified NRC's licensing process, such as the licensing renewal process, as more problematic in ensuring rigorous and transparent regulatory products as compared with NRC's informal rulemakings. While an examination of NRC's entire licensing program is beyond the scope of this study, two

[268] U.S. NRC, Commission Papers (SECY), last updated on January 9, 2012, available at http://www.nrc.gov/reading-rm/doc-collections/commission/secys/. The NRC website also provides an accessible portal to these SECY papers. *Id.* See also Statement of NRC Staff, Feb. 1, 2012.
[269] This statement is based on a review of ten different SECY papers posted in 2011 at http://www.nrc.gov/reading-rm/doc-collections/commission/secys/.
[270] Statement of NRC Staff, Feb. 1, 2012.

Office of the Inspector General (OIG) reports deserve mention because they document problems with the NRC's use of technical information.[271]

The NRC must renew some operator licenses and make amendments to other licenses over time and as the need arises. With regard to license renewal, although a nuclear reactor operating license expires in forty years, the NRC can extend this license for an additional twenty-years if it believes the plant can continue to be operated safely.[272] The NRC has developed technical directions for reviewing these license renewal applications.[273] The NRC's flow chart for this decision-making process is provided below. [274]

Figure 1
Simplified Safety Review Process



Source: OIG-creation based on NRC information

The OIG's review, which focused on the second and third steps (columns) of Figure 1 (i.e., the staff's technical reviews, on-site inspections and audits, and resulting staff evaluation reports and letters), found the staff analyses to lack scientific and technical rigor.[275] For example, more than thirty-five percent of the more than 450 passages examined by the OIG lacked specific support for the conclusions or a mention of the methodology used to conduct the technical review,[276] and more than sixty percent of the passages simply repeated the operators' technical and factual assertions in support of staff conclusions, without any indication of independent validation.[277] OIG found that the lack of guidance to staff in conducting the assessments, coupled with inadequate quality control, to be at the root of much of this lack of rigor and transparency in the

[271] The first of these two reports was mentioned by a public interest stakeholder in interviews as representative of larger problems at the NRC. Interview with Staff, Beyond Nuclear, Jan. 23, 2012.
[272] 10 C.F.R. Part 54.
[273] See OIG, Audit of NRC's License Renewal Program, Sept. 6, 2007, at 1 (summarizing these regulations).
[274] *Id.* at 3.
[275] The OIG performed a content analysis of randomly selected audit reports, inspection reports, and safety evaluation reports in license renewal applications over a six-year period. *Id.* at pp. 45-47 in Appendix C.
[276] An explicit methodology was also found lacking for the post-renewal inspection process. *See id.* at 29.
[277] In addition, less than three percent of the passages contained detailed information to support the conclusions. *Id.* at 46-47.

NRC's safety evaluations.[278] The OIG also found that inspectors and auditors were prohibited from removing operator documents on-site, which made it more difficult for them to conduct the analysis and write the report.[279] This prohibition also made it effectively impossible for others in or outside the agency to validate or even spot-check the quality of these foundational reports used to renew licenses for aging reactors.[280]

A second OIG report is less overtly critical of the technical rigor and transparency of NRC's licensing decisions, but identifies similar types of problems in NRC's safety evaluations of the operators' applications for license amendments.[281] In reviewing these license amendments, the OIG found that NRC's licensing process was not supported by sufficient documentation or validation of the applicant's statements.[282] While the OIG found no instances of flawed safety evaluations, the underlying absence of documentation would seem to limit the OIG's ability to evaluate whether the safety evaluations were in fact robust and reliable.

Public stakeholders suggested that NRC's incomplete documentation and explanation of its methods and technical conclusions, spotlighted in these two OIG reports, has been a continuing source of concern, not only in licensing decisions but in its enforcement of regulations.[283] In essence, these concerns translate to a lack of rigor and transparency in the documentation and explanation of agency decisions. In the case of license renewals and amendment decisions, moreover, it is difficult to imagine how the

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[278] *Id.* at 11-13. The NRC auditors and inspectors also were not instructed on how and whether to seek verification of operator-supplied information, and thus they tended to accept this operator-supplied information without critical scrutiny. There were various examples in the OIG report of how this information required cross-checking and follow-up inquiry regarding past lapses in operator performance, *Id.* at 18-23, and how accepting the operators' generic statements missed a number of important safety concerns.

[279] *Id.* at 14-17

[280] *Id.*

[281] U.S. Nuclear Reg. Comm'n, Review of NRC's License Amendment/Safety Evaluation Process, September 18, 2001, available at http://pbadupws.nrc.gov/docs/ML0127/ML012770353.pdf. The OIG report was commissioned by Congress in 2000 after the failure of a steam pipe that had been approved one year earlier. *Id.* at 1. Since nuclear reactor licenses are very specific, virtually any change to a plant, even simple changes in the organizational chart, requires an approval of an amendment to a license. At the time of the OIG report, in 2001, the NRC was receiving 1,500 applications per year for the review and approval of these amendments. *Id.* at 1.

[282] Specifically, the OIG found that NRC's "process does not provide adequate controls to ensure that all process steps are completed and supported by adequate documentation." *Id.* at i-ii. The OIG did note, however, that the NRC's assessment process was "well-thought out, thorough and provides all the necessary steps for ensuring the staff perform the required technical reviews," id. In their examination of four requested amendment approvals, for example, NRC staff had failed to provide any documentation for "defin[ing] regulatory requirements, policies [and] applicable precedents." In three of the four cases, there was no documentation for the step "Notify public and complete no significant hazards signification." *Id.* at 6.

[283] *See, e.g.*, Inspector General, NRC's Regulation of Davis-Besse regarding Damage to the Reactor Vessel Head, Dec. 30, 2002, at 14 (describing the failure of NRC to document its controversial decision to reverse course and decline to shut down Davis-Besse in light of evidence of significant safety concerns); *see also* GAO, NRC Needs to More Aggressively and Comprehensively Resolve Issues Related to the Davis-Besse Nuclear Power Plant's Shutdown, May 2004.

public or even those within the agency could oversee the licensing decisions when the underlying documents are not available and the methods and technical bases for the conclusions are generally not explained.

c. *External Peer Review*

Science advisory groups appear to play an important role in a number of the NRC's rulemaking processes. In some cases these groups even have the authority to suggest projects and comment on NRC's priorities. Although it is not clear whether the advisory groups are realizing their full potential in ensuring that NRC's use of science is rigorous and transparent, their heavy engagement in NRC's work[284] suggests that they are a critical feature of the decision-making structure, at least for science-intensive issues.[285]

In some rulemaking settings and in virtually all license decisions, peer review by one of the two expert advisory groups is required by statute.[286] In other cases, the NRC requests an existing expert advisory group to review a rule or otherwise provide guidance on a regulatory project. In either case, when this review of a rulemaking occurs, the review is generally conducted by either the NRC's Advisory Committee on Reactor Safeguards (ACRS)[287] or the Advisory Committee on Medical Uses of Isotopes (ACMUI), both of which are chartered under FACA.

The advisory group with the most expansive jurisdiction is ACRS, which was established by the Atomic Energy Act of 1954 to provide advice to the the NRC on licensing, with particular attention to nuclear reactor safety.[288] The NRC by rule has

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[284] Members also commit to considerable service on these committees. ACRS requires 100-120 days a year from each member, with full committee meetings running three days and with 2-3 subcommittee meetings each month. Interview with NRC Staff, Oct. 26, 2011.

[285] *See* Roland Frye, The United States Nuclear Regulatory Commission's Use of Scientific and Technical Advisory Committees, Dec. 2011, at Appendix B.

[286] As detailed below, the jurisdiction of these two advisory groups is focused on the topic areas denoted in their respective names, although the ACRS in particular appears to have an increasingly expansive jurisdiction, which now includes radioactive waste. *See Id.* at 3. In cases where there is not a requirement for peer review, NRC staff and the Commission can still assemble a panel of independent reviewers or experts who are not full-time employees of the NRC for these other regulatory projects. It is not clear whether or how often this type of additional peer review occurs or whether the experts are convened under FACA, however. [Have you checked with Rollie on how frequently this type of additional peer review occurs?] Interviews also revealed that for at least some of these more specific issues, it was difficult to identify neutral reviewers (this is a problem that EPA staff also suggested could occur in pesticide peer review). Interview with NRC Staff, Office of General Counsel, Nov. 15, 2011. As mentioned at the end of this report, however, the challenges associated with developing robust peer review are left for future ACUS projects.

[287] The ACRS is comprised of a maximum of fifteen members, who consist primarily of academics, scientists and regulated parties in the private sector with diverse, relevant expertise. Interview with NRC Staff, Oct. 26, 2011. Members are selected to provide broad expertise, and some attention is also given to ensuring that at least some members have actual operational experience. *Id.*

[288] 42 U.S.C. § 2039. For fuller discussion of the creation and history of this advisory committee, see Frye, *supra* note 285, at 3-5.

charged ACRS with a number of responsibilities.[289] Among these responsibilities is the mandatory review of all informal rules on nuclear safety. ACRS typically reviews the proposed rules either after public comment or simultaneously with public comment and then again, as an optional matter, once the final rule is drafted.[290] The NRC staff typically provides a written response to each of the advisory committee's comments, although historically this was not always the case.[291] Both the ACRS review and staff responses are generally placed in the public record.

Over the more than 50 years of interaction between ACRS and the NRC staff, there have been some vigorous disagreements. [292] In several cases, in fact, the NRC staff did not agree with or accept ACRS' recommendations.[293] Interviewees report, however, that ACRS has never disagreed with staff with regard to the granting of a license or construction permit.[294]

Beyond its formal role in reviewing staff rules, technical documents, and licenses, the ACRS also reports to the Commission at least annually.[295] The ACRS may also, on its own initiative, "conduct reviews of specific generic matters or nuclear facility safety-related items."[296] It may even recommend that the Commission initiate a rulemaking – a formal recommendation that requires a response from the Commission in 90 days.[297] ACRS's scope of powers thus appears quite expansive and may be broader than EPA's CASAC.

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[289] 10 C.F.R. § 1.13 (listing the responsibilities). The responsibilities include, for example, reviewing and reporting on "[e]ach application for a construction permit or an operating license for a facility which is of a type described in [10 CFR] 50.21(b) or 50.22, or for a testing facility." *Id.* at § 50.58(a). NRC regulations also require the staff to involve ACRS in informal rulemakings regarding nuclear safety. NRC, Final Rule, ACRS Participation in NRC Rulemaking, 46 Fed. Reg. 22,358 (1981), *as amended*, NRC, Electronic Availability of NRC Public Records and Ending of NRC Local Public Document Room Program, 64 Fed. Reg. 48,948 (1999).

[290] Interview with NRC Staff, Office of General Counsel, Nov. 15, 2011. For technical rules, the ACRS either reviews proposed rules and provides detailed comment simultaneously with public comment or it provides its review on the proposed rule after the NRC has responded in a draft to public comment. *Id.* ACRS also reviews license decisions, including license renewals, based on the staff's safety reports. These ACRS reviews can be detailed and are always part of the public record. *Id.*

[291] *Id.*

[292] *See* Frye, *supra* note 285, at 6-7.

[293] For instance, in 1959, the ACRS adamantly opposed a staff recommendation regarding standards for locating nuclear power reactors in or near population centers. Similarly, in 1965, the ACRS opposed a related recommendation by the regulatory staff to prohibit the location of power reactors in metropolitan areas. *Id.* at 7.

[294] Interview with NRC Staff, Oct. 26, 2011.

[295] 10 C.F.R. § 1.11(c); Interview with NRC Staff, Oct. 26, 2011. For example, the ACRS makes occasional oral presentations directly to the Commission. *See* Frye, *supra* note 285, at 7.

[296] 10 C.F.R. § 1.13.

[297] *Id.* at § 2.809. It is not clear whether or how often this occurs. Such recommendations must be posted on the NRC website, but in a quick search there did not appear to be a central repository for such postings.

The second advisory committee, ACMUI,[298] plays an important but narrower role in the NRC decision-making as compared with ACRS. ACMUI was created an NRC regulation[299] and reports to staff as needed on medical questions that are referred to it.[300] The Commission may also request advice and expert opinions from this body.[301] The ACMUI receives informational copies of all proposed regulations under its purview,[302] yet unless specifically requested, the ACMUI is not expected to conduct reviews of these rules, although it is allowed to do so. Like the ACRS, there are occasions on which ACMUI and the NRC staff disagree on key issues.[303]

Since the 1980's, the NRC has also employed expert elicitation to develop expert recommendations on particularly difficult technical issues.[304] Unlike peer review or expert advisory boards that comment on technical analyses, expert elicitation involves the selection of experts who attempt to arrive at empirical estimates based on very limited information and often in circumstances where even computational models cannot be developed to handle relevant variables in a robust way.[305] Roland Frye has prepared a memo providing a detailed analysis of that program, which is included in Appendix B.

4. Review by the Office of Management and Budget

Some science-intensive rules not only pass through the levels of agency staff and political management, but are subjected to review by the Office of Information and Regulatory Affairs. Under Executive Order 12866, only regulations with the most significant implications are selected out of the agencies' larger set of rules and formally reviewed,[306] but when this review occurs, the literature indicates that the underlying changes associated with OIRA may be material and yet can be difficult to assess.[307]

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[298] Members of ACMUI come from diverse sectors and appear selected to ensure broad disciplinary representation. Although they were originally expected to include only physicians and scientists, disciplinary representation is much broader in practice. *See* Frye, *supra* note 285, at 10.
[299] 10 C.F.R. § 1.19(a).
[300] Interview with NRC Staff, Office of General Counsel, Nov. 15, 2011; Interview with NRC Staff, Oct. 26, 2011.
[301] *Id.*
[302] Interview with NRC Staff, Office of General Counsel, Nov. 15, 2011.
[303] *See* Frye, *supra* note 285, at 11-12.
[304] Roland Frye, Use of Expert Elicitation at the Nuclear Regulatory Commission, Feb. 16, 2012, included as Appendix B.
[305] NRC identifies expert elicitation as "a well-recognized technique for quantifying phenomenological knowledge when modeling approaches or data are insufficient." NUREG-1829, Vol. 2, Estimating Loss-of-Coolant Accident (LOCA) Frequencies through the Elicitation Process: Appendices A through M (Apr. 2008) (ML081060300), at v (cited in Frye, *supra* note 304, at 1).
[306] See Exec. Order No. 12,866 §§ 3(f), 58 Fed. Reg. 51,735, 51,742 (Oct. 4, 1993). As Section 3(f) makes clear, OMB's review attaches to numerous regulatory projects, and economically significant rules constitute only a fraction of the rules undergoing OMB review.
[307] As the GAO observed in their 2003 study, "the OIRA regulatory review process is not well understood or documented, and the effect that OIRA's reviews have on individual rules is not always easy to determine." GAO, OMB's Role in Review of Agencies' Draft Rules and the Transparency of Those Reviews, Sept. 2003, at 110.

Since this study examines the processes the agencies use to develop science-based rules and assesses the transparency of each step in a rule's development, changes made to science-intensive rules that occur as a result of OIRA review cannot be ignored. If substantive changes are being made to science-intensive rules as a result of OIRA review and if those changes are not identified, then a potentially important step in the development of science-intensive rules may not be accessible to the general public or to scientists who review the rule. [Note that there are other ways that OIRA's responsibilities may allow it to alter the substance of science-intensive rules. For example, under the Paperwork Reduction Act, OIRA must review and ultimately approve agency requests for information from private parties, including scientific and technical information.[308] Even though this clearance role provides OIRA with the ability to influence the substance of science-intensive projects, for example by affecting the types of information an agency can request in the development of its rule, these additional OIRA responsibilities are not examined here since they fall outside the scope of this study – namely the examination of agencies' decision-making processes.]

Executive Order 12866 imposes specific disclosures requirements on the agencies with respect to OIRA's review, yet despite these requirements a number of interviewees and the literature more generally – including two studies by the GAO – highlight the lack of transparency of OIRA-induced changes to science-intensive rules.[309] In order to gain more empirical purchase on the agencies' disclosure of OIRA-inspired changes, the only two subsets of rules in this study subjected to formal OIRA review – the EPA's NAAQS rules and FWS's ESA habitat designations (sixteen rules in total)-- were examined to assess compliance with the transparency requirements of Section 6(a)(E).[310]

a. The Transparency of the Changes made during OIRA's Review

Although in theory the agencies might claim the deliberative process privilege with regard to the disclosure of the results of OIRA's review of agency rules, President Clinton imposed several transparency requirements on the agencies under Executive Order 12866 that override these claims. Specifically, under Executive Order 12866 the agency originating a rule is required to "[i]dentify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OMB for review and the action subsequently announced" and also to "[i]dentify for the public those changes in the regulatory action that were made at the suggestion or recommendation of

[308] This role is discussed above, for example, in OIRA's review and clearance of EPA's requests for information from pesticide manufacturers under the Paperwork Reduction Act. *See supra* Section III.A.1.b.
[309] See the remainder of this Section for support for this statement (Section III.A.4., *infra*).
[310] The Nuclear Regulatory Commission is an independent agency and is not (yet) subject to the review requirements of Executive Order 12866. As discussed, the FWS' listing of endangered species has historically been exempt from OMB review under the Executive Order, as have pesticide approvals under FIFRA. *See supra* Section III.A. Finally, since IRIS assessments are not rulemakings, they also are not technically covered by Executive Order 12866.

OMB."[311] OMB for its part must "make available to the public *all* documents exchanged between OMB and the agency during the review."[312] All of this information must be "provided to the public . . . in plain, understandable language."[313]

OMB and the agencies appear to interpret these Executive Order transparency requirements narrowly, in a way that that generally limits the transparency of the changes made at the suggestion of OIRA.[314] Specifically, for at least some of the rules examined here, the changes made during OIRA review were difficult to identify and impossible to understand. This lack of disclosure appears in direct conflict with Section 6 of the Executive Order and President Obama's memorandum directing agencies to maximize the transparency of their regulatory activities.

1. Documents Exchanged between OIRA and the Agencies

Executive Order 12866 requires that after a rule is published or an agency announces that it will not move forward with a regulation, "OIRA [must] make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section."[315] However, OMB reads the documentation requirements of section 6(b) to apply only to documents exchanged between the agency and the branch levels of OMB.[316] All staff exchanges are treated by OMB as exempt from the reach of this requirement. No justification could be found for this interpretation of the Executive Order, and at least the GAO has been critical of it.[317] No documents underlying OIRA's review of the rules in this study – other than return letters -- were posted on OIRA's website or otherwise made publicly available by OIRA. The absence of documents is consistent with OIRA's narrow interpretation of its responsibilities.

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[311] Exec. Order No. 12,866 §§ 6(a)(3)(E)(ii)–(iii)

[312] Specifically, the EO states: "After the regulatory action has been published in the Federal Register or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OMB shall make available to the public all documents exchanged between OMB and the agency during the review by OMB under this section." *Id.* at § 6(b)(3).

[313] *Id.* at § 6(a)(F).

[314] *See infra* Sections III.A.4.a.1-3.; *see generally* GAO 2003, *supra* note 307, at 119 ("the difficulties that we experienced during this review clearly demonstrated that OIR A's reviews are not always transparent to the public.").

[315] Section 6(b)(4)(D) of Executive Order 12866.

[316] *See, e.g.*, GAO, IMPROVEMENTS NEEDED TO MONITORING AND EVALUATION OF RULES DEVELOPMENT AS WELL AS TO THE TRANSPARENCY OF OMB REGULATORY REVIEWS at 32, n.40 (April 2009) (reporting that "[a]ccording to OMB representatives, the requirement to make available "all documents exchanged between OMB and the agency" issuing the regulation only applies to exchanges made by OMB staff at the branch chief level and above, not documents exchanged between OMB desk officers and staff in regulatory agencies."); *see also* GAO 2003, *supra* note 307, at 57 (reporting on the OIRA document policies that read 6(b) in a limited fashion). This express statement could not be located on OMB's site or in its various memos, however.

[317] *See id.*

(i) Identification of all Substantive Changes occurring during OIRA's Review

Section 6(a)(3)(E)(ii) of the Executive Order requires the agency originating the regulatory action to "[i]dentify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced." For both the NAAQS and ESA rules, the agencies' compliance with the Executive Order requirements consisted, at best, of posting a red-lined version of the rule produced during OIRA's formal review. This documentation was incomplete across the rules in the study, however; for one out of every three rules, there was no red-lined document available, and for one proposed and final rule (lead) there was no documentation of the rule prior to OIRA review. [318]

Even when the agencies did provide red-lined documents of changes occurring during OIRA's formal review, however, this documentation did not "[i]dentify for the public, in a complete, clear, and simple manner" and in "plain, understandable language" "the substantive changes" made during OIRA's formal review as required by Section 6(a)(3)(E)(ii) and (F). In each of these red-lined documents, substantive changes occurring during OIRA review were not separated out of the dozens of grammatical, formatting, and purely editorial and stylistic changes. Instead the changes that appear likely to be substantive were discovered only by reading through each page of the red-lined documents that often run several hundreds of pages long.[319] The GAO noted similar compliance lapses by other agencies in its 2009 study.[320]

In addition, locating the red-lined documents was far from "simple" as required by the Executive Order.[321] While OMB's Reginfo.gov contains a detailed search engine that pulls up information on each rule that is or has undergone OIRA review, this database does not post or link to the red-lined documents.[322] In this study, the red-lined documents for the EPA and FWS rules had to be located on a rule-by-rule basis by

[318] Red-lined documents were not available for: The Canadian Lynx critical habitat final rule; the Primary NAAQS review for Lead (proposed and final); the Primary NAAQS review for Nitrogen Dioxide (proposed and final). For three of these five rules, the pre-OMB draft rule was available, however. The level of compliance was thus higher here than observed by GAO in 2009; they report that 62% of the agencies documented at least some features of OMB's formal review. GAO 2009, *supra* note 316, at 13.
[319] The reader can view the red-lined documents located for the NAAQS rules and habitat designation rules canvassed in this study at /wewagner/upload for acus. The "re-created" red-lined for the proposed and final primary NAAQS nitrogen dioxide review is available at /wewagner/nitrogen dioxide change docs.
[320] GAO observed a wide range of agency compliance with Section 6, ranging from no compliance to detailed memoranda that detailed OIRA changes. *Id.* It appears that the majority of agencies adopt something like the approach here, which is simply posting a single red-lined copy of the draft rule as a result of OMB review. *Id.*
[321] Section 6(a)(3)(E)(ii). GAO encountered the same difficulties in its 2009 study. See GAO 2009, *supra* note 316, at 34.
[322] See http://www.reginfo.gov/public/do/eoAdvancedSearchMain

running searches for the documents in the agency's individual rulemaking dockets.[323] This search was further complicated by the fact that the name that the EPA assigns to these red-lined document is not regularized;[324] in some cases the red-lined document is located only after opening dozens of posted documents that contain OMB or Office of Management and Budget in the title of a rulemaking docket, which in turn can contain hundreds of entries.[325] In the case of the FWS, the search is still more complicated since the FWS did not maintain online dockets for habitat designations under the Endangered Species Act. Instead, one must call the FWS field office that originated those rules during office hours (this office phone number is listed at the end of the published rule in the Federal Register).[326] The Field Office personnel then attempt to identify the appropriate documents and provide them electronically or by mail.

In sum, the evidence of agency compliance with Section 6(a)(3)(E)(ii)'s requirement to identify the substantive changes occurring during OIRA's formal review generally consists, at best, of the posting of a redlined version of the changes that occurred during formal OIRA review in a rulemaking docket. Once found, this document does not identify the substantive changes made by OIRA nor explain them; one must read the hundreds of pages of red-lined to pull out changes that might be important.

(ii) The Identification of changes made at the Suggestion or Recommendation of OIRA

Executive Order 12866 also requires the agency originating a regulatory action to "[i]dentify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA;"[327] yet the agencies did not provide this documentation for any of the rules in this study. Again, this suggests EPA and the FWS are not in compliance with the Executive Order 6(a)(3)(E) requirements for at least some rules. The fact that the red-lined documents reveal hundreds of changes raise the likelihood that OIRA suggested at least some of them during its formal review. Yet there was no effort by the EPA or the FWS to identify which of these redlined changes were

[323] The dockets were searched for "OMB" and "Office of Management and Budget." Searches for "OIRA" and "Office of Information and Regulatory Affairs" typically produced no documents. OMB uses a RIN number to identify rules; agencies use docket numbers. To track down the agency's identification of changes resulting from OMB review, one must locate the agency's docket number by entering the unified regulatory agenda using the RIN number. In cases where the docket number is still not provided, further tracking and linking to find the agency's docket is necessary.

[324] Again, GAO encountered the same difficulties in its 2009 study. *See* GAO 2009, *supra* note 316, at 34 (describing the differences in agency labeling practices).

[325] See the OIRA-EPA exchanges for each of the NAAQS rules in the data compiled for this study at /wewagner/Document Inventory of OMB review.

[326] The docket index was only available for the rule that was undergoing litigation and it seemed from the discussions with several field offices that the preparation of a docket index might be the exception rather than the rule.

[327] Section 6(a)(3)(E)(iii) of Executive Order 12866.

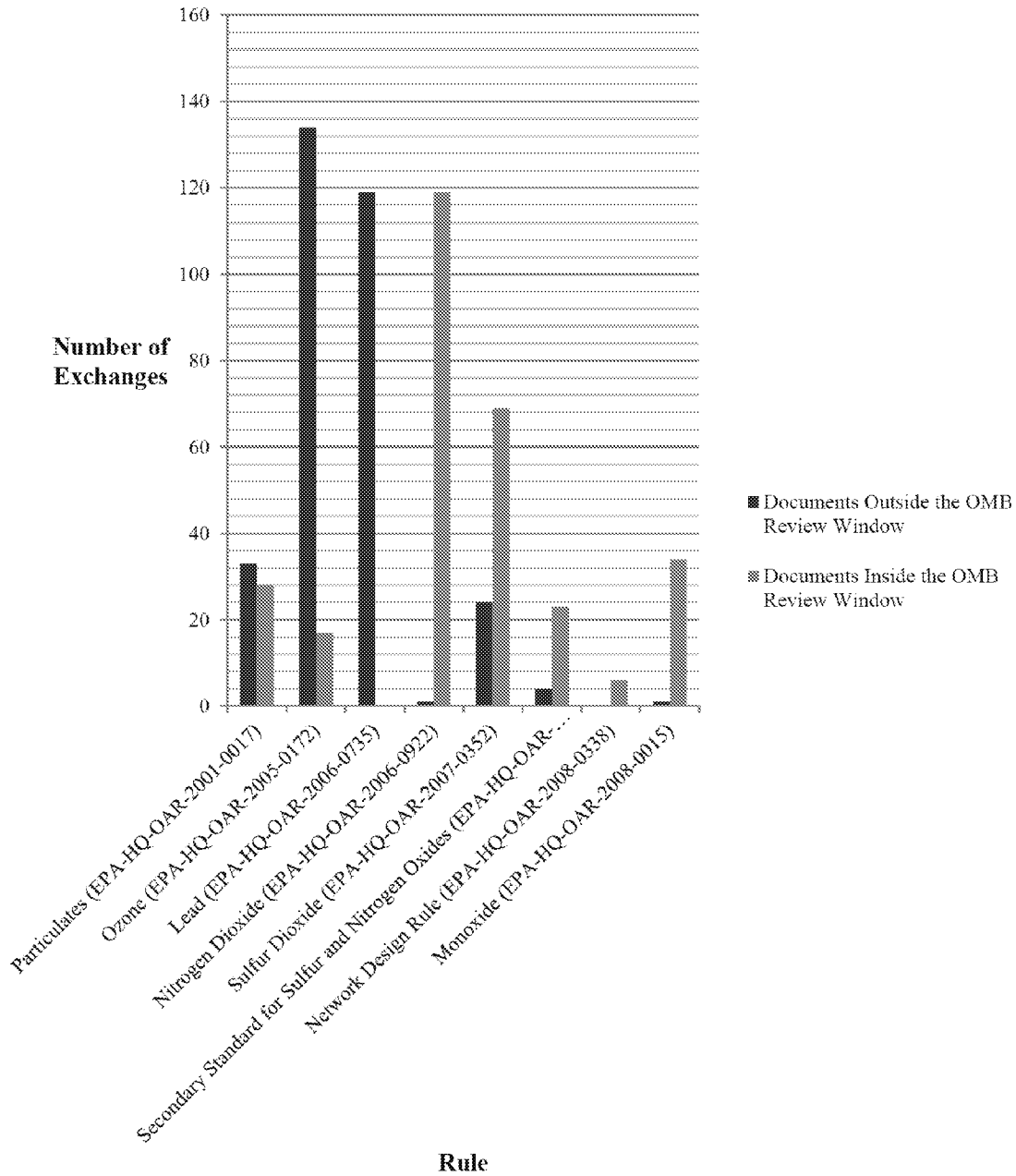
made "at the suggestion or recommendation of OIRA" as opposed to other agencies or the originating agencies themselves.

An agency might maintain that all changes made in a red-lined version that documents the changes made during OIRA's review were also changes "made at the suggestion or recommendation of OIRA." But even if that were true with respect to the changes made during OIRA's formal review, it misses the changes made at the suggestion of OIRA that were made outside this short timeframe. To get a sense of OIRA's review, I assembled all available documentation of OIRA's exchanges cataloged in the EPA NAAQS and FWS habitat designation dockets. Although OIRA does not make the correspondence between its staff and the agency publicly available, the agencies do docket some of this written information consistent with their responsibilities under Section 6(a)(3)(E).[328] The figure below provides a summary of these docketed agency-OIRA communications for the NAQQS rules canvassed in this study.[329] As this figure indicates, the docketed exchanges vary a great deal from rule to rule, but for some rules, relatively extensive exchanges occurred between the agency and OMB outside the formal review period.[330]

[328] EPA did create a site dedicated to tracking rules through the rulemaking process, including those going through OMB review. http://yosemite.epa.gov/opei/RuleGate.nsf/ In a search of the archived rules, however, very little and perhaps none of the information collected in this study on OMB review of NAAQS rules was available. That is not a criticism of the site; only an acknowledgement that the site is not complete.

[329] The excel lists for each of the rules in this study where dockets were available is provided at /wewagner/Document Inventory of OMB review.

[330] *See id.*; *see also* Appendix G.



In the NAAQS rules in particular, nearly half of the communications between OIRA and EPA occurred outside the formal window of OMB review. In the lead primary NAAQS review all of the nearly 120 docketed exchanges between OIRA and EPA occurred outside the very short (1 day) OIRA formal review window.[331] (Readers can access each of the documents by following the hyperlinks to the documents detailed in the footnote.)[332] See also Appendix H. Yet precisely because many exchanges occurred

[331] See Docket EPA-HQ-OAR-2006-0735 at /wewagner/Document Inventory of OMB review

[332] To view the individual documents, go to /wewagner/Document Inventory of OMB review and click a docket number. This will list the OIRA-EPA exchanges, along with some details. In the last column, there

outside the formal review window, the ability of the public to assess the actual changes to a rule "made at the suggestion or recommendation of OIRA" as required by Section 3(a)(3)(E)(iii) is effectively impossible. At best, one can piece together scattered docketed email exchanges between OMB and the agency to identify potential changes, and then compare those potential changes against the published rule.[333] Even then, the agency dockets are incomplete. Some docket exchanges consist only of the short cover emails, and omit the attachment that contain the substantive comments and suggested edits. In its report, GAO similarly noted extensive OMB engagement with agency rules outside of the formal review process that were not accounted for by agencies in compliance with the Executive Order.[334]

In sum, while Section 6(a)(3)(E)(iii) requires the agencies to "[i]dentify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OMB," the EPA and FWS did not identify these changes for any of the rules in this study.[335] While it is possible that this simply means that there were no changes in any of the rules, the red-lined documents and other documents posted, particularly by EPA, belie that possibility. Indeed, given the likelihood that no identification of changes will be interpreted by the public as signifying that OIRA offered no changes, agencies should either provide the identification of changes for each rule or indicate that there were no changes made at the suggestion or recommendation of OIRA.

It is not clear why the agencies did not provide this identification of changes as required by Executive Order. One partial explanation for this noncompliance is the possibility that the agencies read a cryptic 1993 OMB directive to suggest that Section 6(a)(3)(E)(iii) should be read as a subset of Section 6(a)(3)(E)(ii).[336] Yet even in this statement, the agencies are still directed by OMB to identify the changes "made at the

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is a hyperlink to the original document which is posted at regulations.gov. In the longterm, I hope to gather more detailed information about the nature of these exchanges, both in substance and in relation to formal review. At this point, however, the reader must assess for themselves the nature of these various communications.

[333] GAO 2003, *supra* note 307, at 111 (reaching a similar conclusion).

[334] *Id.* at 5.

[335] The same finding appears to be drawn from the GAO study, which found very few agencies able to attribute the changes to OMB. *See, e.g.*, *id.* at 111.

[336] *See, e.g.*, Memorandum to Executive Heads and Departments form Leon Panetta, Oct. 12, 1993, at 9, available at http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/eo12866_implementation_guidance.pdf. The 1993 memorandum provides only this one sentence guidance on Section 6(a)(3)(E):

> In addition, after the regulatory action has been published in the Federal Register or otherwise issued to the public, each agency is to identify for the public, in a complete, clear, and simple manner, the substantive changes that it made to the regulatory action between the time the draft was submitted to OIRA for review and the action was subsequently publicly announced, indicating those changes that were made at the suggestion or recommendation of OIRA (Sec. 6(a) (3)(E) (ii) & (iii)).

See also GAO 2003 Study, *supra* note 307, at 56-57, 95 (discussing difficulty with OMB's apparent legal interpretation).

suggestion or recommendation of OIRA."[337] OIRA's interpretation could also be read to require the agencies to identify changes "made at the suggestion or recommendation of OMB," be limited only to formal OIRA review, but again OIRA's interpretation does not go that far.[338] Regardless, since the agencies, not OIRA, are tasked with responsibility for meeting the requirements of Section 6(a) of the Executive Order,[339] OMB's interpretation – even if it did preclude agency compliance with (E)(iii) which it does not – will not insulate the agencies from their important disclosure requirements. Indeed, the responsibility to identify changes resulting from OIRA review was likely placed on the agencies precisely in order to provide an independent check on this review.

Equally problematic in terms of the agency's compliance with Section (E)(iii), OIRA review can sometimes result in the suspension or even termination of rules; yet beyond the fact that a rule is withdrawn (identified on OIRA's website), there is no record of what happened during this suspension period or what OIRA suggestions led to the withdrawal or suspension of the proposed rule. The GAO raised concerns about this as well and issued recommendations for heightened transparency about rule withdrawals. As just one example, from a rule in this study - the primary NAAQS for nitrogen dioxide - EPA initiated a review process with OIRA in January 2009, but withdrew the proposed rule two weeks later without public explanation.[340] It took EPA another four months to

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[337] *Id.*

[338] OMB directs agencies to identify changes made between the "time the draft was submitted to OIRA for review" and when the regulatory action was subsequently publicly announced, which could include both formal reviews and more informal reviews occurring outside the formal review period. In any event, reading the (E)(iii) disclosures as limited to only the formal review period is not a reasonable reading of the Executive Order and hence, by extension, it is not a reasonable reading of OMB's passage either. Collapsing Sections (ii) and (iii) of the Executive Order together to require disclosure of changes occurring only during formal review conflicts with basic rules of legal interpretation that afford each section an independent meaning; moreover, subsection (iii) refers to an identification of all "changes [made] in the regulatory action," while subsection (ii) refers only to "substantive changes" made "between the draft submitted to OIRA for review and the action subsequently announced." Collapsing the two sections to preclude an identification of changes occurring outside the formal review is also inconsistent with the structure and intent of Section 6, which seeks to provide basic transparency of the results of OIRA review, as well as with the President Obama's memorandum on transparency. Finally and perhaps most important, to limit disclosures of OIRA-induced changes only to the formal review period risks missing most, if not all, of the changes made at the suggestion of OIRA, in at least some rules. Perhaps in 1993 when OIRA issued this statement, its influence was limited to the formal review period. Twenty years later, it is clear – on OIRA's own admission -- that many changes made to rules at the suggestion or recommendation of OIRA occur outside the formal review period and the interpretation makes disclosure badly incomplete. *See, e.g.*, GAO 2003, *supra* note 307, at 36-37 and 113-114.

[339] *See* Section 2(a) and Section 6(a) of the Executive Order. Section 2(a) for example directs that: "Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with applicable law. the President's priorities, and the principles set forth in this Executive order." Section 6(a), entitled "Agency Responsibilities" reinforces that compliance is the responsibility of the agencies.

[340] *See* http://www.reginfo.gov/public/do/eoDetails?rrid=116780 (the record of EPA's withdrawal of the proposed rule after a two week period at OMB). A review of the more than 400 documents in the EPA's docket did not reveal any documents that explained the reason for withdraw or even the fact that the initial draft had been submitted. To this extent, the EPA is arguably in violation of Section 6(a)(3)(E)(i) to the

return to OIRA with a new proposed rule.[341] Yet there are no docketed exchanges regarding this brief unconcluded OMB review that explain what transpired or how or whether OMB suggested or recommended changes that influenced EPA's subsequent draft proposed rule.[342] While it is possible that the initial submission to OIRA and subsequent withdrawal did not lead to any changes to the rule made at the suggestion or recommendation of OIRA, this seems unlikely. Several agency officials interviewed for this study also suggested that OIRA is becoming increasingly active in pre-review in an effort to avoid these withdrawals; OIRA simply urges the agency not to send a rule for OIRA review so that a public record of withdrawal is not created. The potential significance of these types of informal or non-formal review exchanges was further underscored by a recent Washington Post article that reported an apparent request by OMB that EPA hold a publicly important rule and not submit it to OMB for review.[343]

To the extent that these pre-review activities and withdrawals ultimately lead to changes "at the suggestion or recommendation of OMB," they should be disclosed and explained by the agency. Additionally and in order to remain faithful to the spirit of the President's memorandum on transparency, the agencies should document these changes even if the regulatory action is never published. Otherwise these withdrawals and holds provide a major loophole in ensuring the basic transparency of OIRA review as promised by Section 6(a) of E.O. 12866.

(iii) No Enforcement of Agency or OMB Compliance

Across the rules investigated here, there was no centralized effort to ensure agency compliance with Section 6(a)(3)(E) nor were sanctions levied against noncomplying agencies. OMB concedes that it does not monitor the agencies'

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extent that it doesn't provide the draft that it submitted to OMB at the initiation of this, ultimately withdrawn rule.

[341] *See* http://www.reginfo.gov/public/do/eoDetails?rrid=117155 (the record of EPA's second submission of the proposed rule to OMB). The draft submitted and then withdrawn in January 2009 could not be located on EPA's docket. To the extent that changes were made to that proposal as a result of OIRA's suggestions, they do not appear to be provided in the public record.

[342] Since this discovery of the withdrawal was accidental, this type of concluded review may be a far more frequent occurrence. A search of EPA rules that have been withdrawn over time yielded a list of 162 rules since 1981. (To replicate this search, go to http://www.reginfo.gov/public/do/eoAdvancedSearchMain. Select EPA as the main agency and "withdrawn" as the "concluded action". Also click "concluded reviews" rather than the default of pending reviews (located on the right column of the search terms). GAO also indicated concern about withdrawn rules and the lack of documentation of OMB's influence in the process. *See, e.g.*, GAO 2003, *supra* note 307, at 7.

[343] Juliet Eilperin, Obama administration slows environmental rules as it weighs political cost, Feb. 12, 2012, Washington Post, available at http://www.washingtonpost.com/national/health-science/obama-administration-weighs-political-cost-of-environmental-rules/2012/02/07/gIQAvJzx8Q_story.html. An effort to locate documentation of these discussions was not successful, however. The docket on the Tier III rules was empty. EPA-HQ-OAR-2011-0135 . (See http://www.epa.gov/rfa/tier3.html for the discussion of the rule and the docket number).

compliance with Section 6(a)(3)(E) of the Executive Order;[344] OMB also does not reference or link to the agency's redlined document in its own database, reginfo.gov, to make it easier for the public to evaluate agency compliance. Similarly, within the agencies there did not appear to be a coordinated system to ensure compliance with section 6(a)(3)(E) or even to issue agency-wide interpretations and directions for what this section requires.

b. Scientific Significance of the Changes that result from Formal OIRA Review[345]

A number of interviewees maintained that OMB did make changes to the scientific and technical characterizations of some of EPA rules (and the NAAQS rules in particular),[346] but evidence of this influence was not provided and thus the nature and significance of these changes was controverted. To gain a preliminary assessment of the nature of changes made during OIRA's formal review, I coded all non-editorial changes[347] in each of the available red-lined documents for the rules canvassed in this study based on whether the changes appeared technical or non-technical.[348] Technical changes are those that involved alterations to technical discussions in the preamble or rule, such as qualifying scientific discussions, adding scientific or technical citations, revising the numbers in tables, and recommending different substantive standards altogether that would seem to benefit from further scientific review and discussion. Non-technical changes may be significant, but they concern legal issues, economic issues, or other types of changes that do not affect the characterization of the scientific record or make technical or scientific changes to the rule or its preamble. For example, the following red-lined excerpt – which occurred to EPA's rule during OIRA review -- would be counted as a technical change since it involves changes to the enforceable rule that occurred during OMB review.

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[344] GAO 2009, *supra* note 316, at 32.
[345] As discussed above, there is no way to identify the changes made at the suggestion of OIRA throughout the rulemaking record.
[346] *See, e.g.*, infra notes 590-591 and accompanying text.
[347] *See* Appendix G for further definitions of this term.
[348] *See* Appendix G. A proposed rule might record thousands of changes in the red-lined reviewing pane, but less than one-hundred of these changes appear non-editorial and are thus coded as either technical or non-technical. The coded changes then constitute only a fraction of the changes made during OMB review. Note that the methods used here are different from those employed by GAO in its 2003 and 2009 study in which GAO categories the cumulative changes made by OIRA to a rule on a spectrum ranging from significant to nonexistent. *See, e.g.*, GAO 2003, *supra* note 307, at 29-30.

An Excerpt of the Redlined Changes Occurring during OIRA's Formal Review of EPA's Proposed Rule for the Sulfur Dioxide NAAS[349]

5. Calculation Procedures for the 1-hour Primary SO_2 NAAQS.

~~(~~a) *Procedure for identifying annual 99th percentile values.* When the data for a particular site and year meet the data completeness requirements in section 3(b), or if one of the conditions of section 3(c) is met, or if the Administrator exercises the discretionary authority in section 3(d), identification of annual 99th percentile value is accomplished as follows.

(i) The annual 99th percentile value for a year is the higher of the two values resulting from the following two procedures.

(1) Procedure 1. For the year, determine~~will be based on~~ the number of days with at least 75 percent of the hourly values reported.

(A~~i~~) For the year, from only the days with at least 75 percent of the hourly values reported, select from each day the maximum ~~highest~~ hourly value.

(B~~ii~~) Sort all these ~~the valid~~ daily maximum hourly values from a particular site and year by descending value. (For example: (x[1], x[2], x[3], * * *, x[n]). In this case, x[1] is the largest number and x[n] is the smallest value.) The 99th percentile is determined from this sorted series of daily values which is ordered from the highest to the lowest number. Using the left column of Table 1, determine the appropriate range (i.e., row) for the annual number of days with valid data for year y (cn_y). The corresponding "n" value in the right column identifies the rank of the annual 99th percentile value in the descending sorted list of daily site values for year y. Thus, $P_{0.99,y}$= the nth largest value.

(2) Procedure 2. For the year, determine the number of days with at least one hourly value reported.

(A) For the year, from all the days with at least one hourly value reported, select from each day the maximum hourly value.

(B) Sort all these daily maximum values from a particular site and year by descending value. (For example: (x[1], x[2], x[3], * * *, x[n]). In this case, x[1] is the largest number and x[n] is the smallest value.) The 99th percentile is determined from this sorted series of daily values which is ordered from the highest to the lowest number. Using the left column of Table 1, determine the appropriate range (i.e., row) for the annual number of days with valid data for year y (cn_y). The corresponding "n" value in the right column identifies the rank of the annual 99th percentile value in the descending sorted list of daily site values for year y. Thus, $P_{0.99,y}$= the nth largest value.

(b) The 1-hour primary standard design value for a site is mean of the three annual 99th percentile values, rounded according to the conventions in section 4.

A review of the available red-lined documents for the NAAQS reviews revealed that in most rules the majority of the non-editorial changes were technical in nature. See Table below. The changes made to FWS rules, by contrast, were about equally divided between technical and more substantive (often legalistic) changes and were, overall, fewer in number.[350]

[349] Red-lined of the Proposed NAAQS Standard for Sulfur Dioxide at pages 244-46, Docket id EPA-HQ-OAR-2007-0352-1347, available at regulations.gov.
[350] *See* Appendix G .

Title	Proposed/Final	# Non-editorial Changes	#/% of non-editorial Changes that were technical
Secondary	Proposed	44	35 (80%)
Secondary	Final	21	13 (62%)
Lead Monitoring	Proposed	24	15 (62%)
Ozone	Proposed	12	6 (50%)
Network Design	Proposed	5	0 (0%)
Sulfur Dioxide	Proposed	49	42 (86%)
Sulfur Dioxide	Final	16	10 (62%)
Monoxide	Proposed	26	13 (50%)
Monoxide	Final	14	10 (72%)

While it was not possible without considerably more expert assistance and detective work to determine the significance of most of these various technical changes, for more than half of the NAAQS rules examined in this study, the science-based rules did change during OIRA's review in ways that affect the enforceable requirements of the regulation.[351] For example, the required number of ambient monitors to measure both carbon monoxide and nitrogen dioxide concentrations in the ambient air[352] were reduced by about twenty percent during OIRA's review (since EPA did not identify the changes made at OIRA's suggestion, it is not possible to determine whether the change was actually made at the suggestion of OIRA).[353] During OIRA review, EPA changed the rule for the secondary standard for the oxides of nitrogen and sulfur to adopt the primary standard (EPA had initially declined to set a secondary standard) (the same qualification applies to this change).[354] At OIRA's recommendation, EPA also loosened the secondary

[351] In its 2009 report, the GAO identified about 30% of the rules it reviewed as involving significant changes that "revised the scope, impact, or costs and benefits of the rules". GAO 2009, *supra* note 316, at 5.

[352] For the WORD-generated track change document that highlights this change in the nitrogen dioxide rule, see the final red-lined rule posted at /wewagner/nitrogen dioxide change docs. For the change in the carbon monoxide final rule, go to pages 100- 101 of the red-lined final rule for carbon monoxide, which is listed as EPA-HQ-OAR-2008-0015-0200A track final rule and is posted at /wewagner/upload for acus.

[353] If the reduced number of monitors falls comfortably within some range agreed upon by the scientists, meteorologists and statisticians, and has no scientific costs or downsides, then these changes may not intersect with scientific issues. If however there are technical implications of a reduced number of required ambient monitors, then these changes do occur at the intersection of science and policy.

[354] EPA apparently preferred to provide no secondary standards; during OMB review the primary standard was inserted.

standard for ozone (this change was not located through examination of the red-lined documents but instead is reported in the literature, which is why OIRA's role is clearer).[355] OIRA's influence could not be identified in the lead proposed and final rules, but the number of substantive documented exchanges (N=119) occurring between OIRA and EPA give an outsider the impression that OIRA's influence on the lead rule may have been significant.[356] See also Appendix H and hyperlinked documents in the footnote. Finally, OMB returned two of the NAAQS rules regarding ozone NAAQS in 2011 due primarily to concerns about the implementation of the NAAQS rule on the economy, where the rules remain to this day.[357]

Since the red-lined documents provide only the changes occurring during formal OIRA review, moreover, they miss all of the changes made at the suggestion or recommendation of OIRA occurring at other points in the regulatory life cycle. A review of some of the scattered documents included in EPA's NAAQS rulemaking dockets reveal that these pre-formal review exchanges also involve disagreements about interpretation of scientific evidence. See Appendices F and H. While the examples in NAAQS documents are necessarily incomplete, they do indicate that OIRA is not reluctant to get "deep" in the science, as various interviewees suggested.[358]

A few complementary studies also find that OIRA involved in technical and scientific features of the agencies' regulatory actions. In their detailed study of OIRA involvement in EPA's IRIS profiles during the Bush Administration, for example, the Majority Staff of the House Subcommittee on Investigations and Oversight concluded that OIRA played a central role in "challenging the science being done at regulatory agencies."[359] "[T]he Subcommittee has ample documentation showing that OIRA's staff scientists did far more than merely coordinate and facilitate science discussions across agencies. OIRA's staff scientists directly challenged the science put forward by EPA IRIS staff in very detailed peer review-type comments."[360]

The Majority Staff include in their report extensive documentation of communications between OIRA and the agencies that provide numerous examples of

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[355] *See, e.g.*, Robert Percival, *Who's in Charge? Does the President Have Directive Authority over Agency Regulatory Decisions?*, 79 Fordham Law Review 2487, 2520-21 (2011); Juliet Eilperin, Ozone Rules Weakened at Bush's Behest, Washington Post, March 14, 2008, at A1., available at http://www.washingtonpost.com/wp-dyn/content/article/2008/03/13/AR2008031304175.html

[356] See the documents posted in EPA's docket, cited at *supra* note 331

[357] See Ozone return letter which put an end to the Network Design rule and the Ozone primary NAAQS review, available at http://www.whitehouse.gov/sites/default/files/ozone_national_ambient_air_quality_standards_letter.pdf

[358] *See infra* note 591.

[359] Majority Staff of the Subcommittee on Investigations and Oversight, Nipping IRIS in the Bud: Suppression of Environmental Science by the Bush Administration's Office of Management and Budget at 2 (June 11, 2009), available at http://www.ucsusa.org/assets/documents/scientific_integrity/miller-iris-report-june-09.pdf.

[360] *Id.* at 5.

substantive editorial change(s) by OIRA to EPA's characterization of the science. As just one representative example, OIRA staff inserted the following bold passage to EPA's summary of the scientific literature in an IRIS profile:

> this may imply that different activities may expose different age groups more than others, or that some PBDE congeners may accumulate differently with age, **however the sample size here is very small and firm conclusions cannot be made.**[361]

This type of editorial insert is similar to a number of the technical changes identified in the NAAQS red-lined documents examined in this study; the technical edits frequently qualify the characterization of the relevant literature in ways that alter the weight or credibility to be attached to them.[362] In GAO's 2003 study there are similar references to substantive, technical changes by OIRA to EPA rules. For example, OIRA suggested adding the qualification that EPA was adopting "plausible but highly uncertain assumptions" to EPA's preamble;[363] in another rule, GAO identified how OIRA successfully convinced EPA to remove manganese from the list of hazardous constituents in its final rule.[364]

c. Implications

The risk that science-intensive rules can be changed in ways that are at odds with public understanding or the scientific record are heightened when the rulemaking process includes opportunities for agency officials to change the rules without public disclosure or expert review. While the most salient example of this type of manipulation in recent years did not involve OIRA or the White House, but instead involved actions by a high level DOI appointee, Julie MacDonald,[365] a close examination of the McDonald experience and other examples in which science has been politicized reveal a set of circumstances – often present during OIRA review -- that seem to make rules particularly susceptible to these behind-the-scenes manipulations. Specifically, in most if not all cases of politicization of science, the process governing the integration of science into regulation tends to involve: 1) a regulatory decision that involves high stakes; 2) high-level interventions or related pressures occurring at a point in the decision process where

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[361] *See id.* at 7. Excerpted from interagency documents provided in full at Appendix A.

[362] See Red-lined Drafts of Proposed and Final NAAQS and Habitat Designation rules at /wewagner/upload for acus

[363] GAO 2003, *supra* note 307, at 79.

[364] *See id.* at 9.

[365] During her tenure, MacDonald managed to alter the scientific record supporting species listing and habitat designations through a variety of techniques. The result in a number of cases was alterations in the agency's rules. While MacDonald's actions may have been motivated by a policy agenda, the changes she made were to the characterization of the scientific evidence. *See, e.g.*, Office of Inspector General, U.S. Department of Interior, "The Endangered Species Act and the Conflict between Science and Policy" (2008). This type of political meddling into the scientific record to alter decisions on policy grounds is only one of many examples of the politicization of science by government officials. *See, e.g.*, Holly Doremus, *Scientific and Political Integrity in Environmental Policy*, 86 TEXAS LAW REVIEW 1601 (2008)

there is limited to no transparency regarding the changes, and 3) the absence of rigorous scientific oversight or peer review of the changes, including changes to the characterization or use of the relevant science.[366]

Experience thus reveals significant risks associated with decision-making processes that allow last-minute, high level changes to an agency's characterization of scientific or technical evidence, especially where these changes are not recorded, justified, or subjected to scientific or technical review. Section 6(a) attempts to counter some of these risks through its direction to the agencies to document the changes made as a result of OIRA's review, both formal and informal. Yet compliance with Section 6(a) by the agencies in the rules studied here was incomplete. While the preliminary study of NAAQS and ESA rules conducted here illuminates some features of OMB review in need of further study, it also highlights areas worthy of preliminary recommendations by ACUS.

First and as mentioned above, EPA and FWS, for the rules studied here, did not identify or explain the "changes made at the suggestion or recommendation of OIRA" as required by Section 6(a)(3)(E)(iii) of Executive Order 12866. For some rules, numerous exchanges occurred between OMB and EPA both inside and outside of the formal review process and yet none of the resultant changes made at the suggestion of OIRA to its regulatory actions were identified by the EPA. The 2009 GAO study similarly concludes from interviews of OIRA officials that changes, particularly during informal review, can be significant and yet are undisclosed.[367]

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[366] *See, e.g., id.* at 1640 (concluding that "[t]he single biggest contributor to the lack of political integrity in this Administration's environmental-policy decisions is the absence of barriers between political appointees who view their mission as the single-minded advancement of the President's policy agenda and career employees charged with providing scientific advice or analysis."). Julie MacDonald, for example, edited decisions in ways that were largely invisible to outsiders and that often occurred at the "eleventh hour." *See, e.g.*, OIG Report, *supra* note 365, at 1 and 16. MacDonald also had conflicts of interest on some of the decisions that were unknown to others and influenced her decisions. *See id.* at 3. One of the case studies elaborates on these features that are particularly likely to lead to the politicization of science. In one case:

> The [FWS] rule drafted by the field biologists represented the views and recommendations of the biologists, and as the rule for the CHD traveled through the region, fairly few edits were made to the recommendations of the biologists. However, once the rule was forwarded to Washington, D.C., [a FWS biologist] said the rule underwent significant editing [by MacDonald].

Id. at 21. In another example, "Macdonald . . . changed the text of the final rule the day before it was completed." *Id.* at 33. In yet another "MacDonald recommended numerous edits to the gulf sturgeon rule that were different than what the FWS recommended" and directed changes to be made "despite concerns expressed by region biologists and solicitors that the record did not support" them. *Id.* at 56.

[367] GAO 2003, *supra* note 307, at 95 (observing that in some of the rules reviewed, "OIRA suggested significant changes prior to formal submission of the rule to OIRA). *See also id.* at 113 (concluding that "restricting the transparency requirements in Executive Order 12866 only to a brief period of formal review seems antithetical to the intent of those requirements."); *id.* at 114 ("it is not clear who OIRA believes that the executive order's transparency requirements should not cover the part of the review period when the most important changes can occur.").

Second, even with respect to the agency's responsibility for identifying the changes occurring during OIRA's formal review, compliance by the agency proposing the rule is incomplete on several levels. For about one-third of the NAAQS and ESA rules, there was no explication of the substantive changes that occurred during OIRA formal review. In addition, for the remaining rules, the agency's red-lined version of the proposed or final rule did not "[i]dentify for the public, *in a complete, clear, and simple manner, the substantive changes* between the draft submitted to OIRA for review and the action subsequently announced" as required by subsection (E)(ii) (emphasis added). These red-lined documents were also very difficult to locate within the larger, individual rulemaking dockets and not provided in a "simple" manner.

More complete agency compliance with the requirements of Section 6(a)(3)(E) for science-intensive rules would help abate the risk that these rules can be changed in ways that escape not only understanding by the public, but by scientists familiar with the technical details of the rule. Recommendations in the final section identify how this transparency of these changes can be increased in the future.

B. Agency Efforts to Improve the Scientific Integrity of their Processes

In recent years, the suppression and editing of staff technical analyses by political appointees in ways that substantially change the analyses have received a great deal of attention.[368] Much like the more general criticisms of agency transparency, however, these politicization problems with agency science are not well characterized. To be sure, there are publicized accounts of staff suppression and the editing of technical memoranda by agency management in ways that alter the characterization of the scientific information, but they are relatively few in number.[369] Likely more pervasive, but even more difficult to document, are concerns by agency personnel and outsiders that there is a risk of group think and the discouragement of dissenting views in some agency settings. This type of group think or top-down narrowing of acceptable views may not be malicious or even conscious, but if it occurs it can impair the quality of the underlying technical analysis by limiting the vigorous skepticism afforded the agency's analysis.[370]

The President's directive on scientific integrity identifies all of these scientific challenges, but it focuses most intently on the need to halt the overt manipulation of agency science by supervisors and political appointees.[371] According to one former

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[368] *See, e.g., supra* note 5; Testimony of Jeff Ruch, PEER, Endangered Species Act Implementation: Science or Politics, before the House Natural Resources Committee, May 9, 2007, available at http://www.peer.org/news/news_id.php?row_id=854.

[369] *See, e.g.,* Doremus, *supra* note 5; OIG MacDonald Report, *supra* note 11.

[370] *See infra* Section IV.B.3.

[371] Interviews with past OSTP employees confirmed that the laser-like focus from the Obama Scientific Integrity directive was on this politicization of science, with less focus on other problems with regulatory science that were known to be problematic, including regulatory review, the quality of regulatory science,

Office of Science and Technology Policy (OSTP) official, there was strong support within all the agencies for this narrower focus. Agency scientists were purportedly "jubilant" at the prospect of finally addressing this issue formally within the Executive Branch.[372] Not surprisingly, the agencies' science integrity guidelines promulgated in response to the President's and OSTP's directives primarily address the "science politicization" problem and defer or only lightly address the challenge of encouraging diverse views and internal skepticism. In particular, the signature feature of most of these agency and departmental scientific integrity guidelines is the establishment of a scientific misconduct process. A number of agencies' scientific integrity guidelines also include codes of conduct and communications policies, so that agency scientists can publish, speak with the press, and express their views without clearance requirements.[373] While the current guidelines are still developing and thus are inevitably incomplete, they constitute a solid foundation for future integrity programs. Regardless, the purpose of this report is to provide only a brief synopsis of these emerging programs without a detailed critique of their details.

A review of these recent scientific integrity policies, as well as other relevant programs in place at DOI and EPA at the time of the study, is provided below. The final section then considers NRC's approach to these problems, which have been evolving for several decades and have been implemented independently of the recent White House initiative.

1. Scientific Integrity Policies in response to the White House Initiative

a. The Department of the Interior

DOI was the first agency to develop a final science integrity policy in response to OSTP Director John Holdren's memorandum requesting these polices. Recall that President Obama requested OSTP to develop a government-wide program to enhance the scientific integrity of agency work, and Director Holdren's subsequent memorandum set the parameters for that program.[374] DOI officials indicate that this integrity policy is only the first in a series of policies that they intend to promulgate to address issues of scientific integrity.[375] DOI is currently working on a communications policy in response to the

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and how to set policy on scientific communications from an agency. Interview with former OSTP employee, Feb. 14, 2012; Interview with former OSTP employee, Jan. 23, 2012.

[372] Interview with former OSTP employee, Jan. 23, 2012.

[373] *See generally* OSTP, Scientific Integrity Policies Submitted to OSTP, available at http://www.whitehouse.gov/blog/2011/08/11/scientific-integrity-policies-submitted-ostp.

[374] *See supra* notes 6-7 and accompanying text.

[375] Interview with Department of Interior Staff, Aug. 29, 2011. There was some internal disagreement about the strategy of developing guidelines that addressed only one issue at a time. A decision was ultimately made to start with the low hanging fruit and gradually develop policies on these other, more difficult areas as consensus builds. Without this more incremental approach, there was also a concern about paralysis and/or extended delays in which the DOI would operate with absolutely no integrity guidelines in place. *Id.*

scientific integrity initiative and has plans to address a succession of other issues over time.[376]

The goal of DOI's current integrity policy, which is focused primarily on policing misconduct and establishing codes of conducts, is to provide agency scientists with autonomy and the support of the organization if they believe they have been coerced or otherwise bullied in ways that go beyond basic minimum standards of scientific integrity.[377] The hope is that this policy will allow problems within the Department to be identified and corrected at an early, internal stage of the deliberations, before they grow into larger public controversies.[378]

In its initial scientific integrity policy, DOI has established a relatively elaborate scientific misconduct process.[379] Under the policy, DOI staff and outside parties can make allegations of scientific misconduct against a staff or official within DOI.[380] The scientific misconduct process thus provides a mechanism that is new to DOI policy for formally reporting and punishing scientific fabrication, including editing technical reports in ways that are not supported by the evidence.[381] While the definition of misconduct is relatively narrow and includes only intentional or reckless "fabrication, falsification, or plagiarism" in scientific activities,[382] DOI's policy also encompasses "intentionally circumventing policy that ensures the integrity of science and scholarship" or in ways that "compromise scientific and scholarly integrity."[383]

DOI's process involves the initial submittal of a non-anonymous allegation of misconduct by anyone, including persons outside the agency.[384] If the allegation is determined to be credible, then an inquiry will be conducted.[385] If it is ultimately

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[376] *Id.*
[377] *Id.*
[378] *Id.*
[379] Department of Interior, Departmental Manual 305 DM 3, Jan. 28, 2011, available at http://www.whitehouse.gov/sites/default/files/microsites/ostp/DOI-DM-sci-integ.pdf [hereinafter DOI Scientific Integrity Guidelines]. A critical OIG report, published in April 2010, undoubtedly provided an added urgency; this April 2010 report focused exclusively on the failure of the DOI to develop a scientific misconduct program and was published only one year after the large, OIG investigation of the Julie MacDonald case. OIG, DOI, Evaluation Report: Interior Lacks a Scientific Integrity Policy, Report No. WR-EV-MOA-0014-2009 (April 2010); *see also supra* note 222.
[380] DOI Scientific Integrity Guidelines, *supra* note 379.
[381] DOI's misconduct provisions borrow from the HHS, Office of Research Integrity regulations on scientific misconduct, 42 C.F.R. Part 93. It may be the case that at least some of the DOI's integrity regulations were overdue. In 2000 OSTP issued a policy requiring federal agencies to adopt scientific misconduct regulations following ORI's model for extramural and intramural research. *See* http://ori.hhs.gov/federal-policies. The extent to which DOI's 2011 policy simply satisfies this earlier 2000 command would benefit from further research.
[382] DOI Scientific Integrity Guidelines, *supra* note 379, at 3.5M; *see also id.* 3.8A (adding the intentional and reckless requirement and cautioning against using the process for honest differences of opinion).
[383] *Id.*
[384] *Id.* at 3.8A(1).
[385] This inquiry is conducted by the Department or Bureau Scientific Officers working with the responsible manager and an assigned Servicing Human Resources Officer. *See id.* at 3.8B through F

determined that intentional or reckless misconduct occurred, then sanctions – spanning the range from termination to reprimand – may be issued.[386] As mentioned, DOI's integrity policy also offers codes of conduct and principles to guide staff behavior, although these objectives appear difficult to enforce, in part because of their ambiguous definitions.[387]

DOI's scientific integrity policy has been criticized by several public interest groups for failing to establish a public tracking system for the misconduct complaints filed in the Department.[388] DOI has also been criticized for failing to address other important science integrity issues in its first set of guidelines, such as enhanced whistleblower protections.[389] DOI admits that its first policy has a limited range in

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[386] Sanctions are issued at the discretion of by the manager and the Servicing Human Resources Officer. *See id.* at 3.8G. DOI is currently developing a training and outreach program to educate staff about the program and how they can report misconduct within the Department. Interview with Department of Interior Staff, Aug. 29, 2011. Within the Department, there is a collaborative learning network (not available to those outside the agency) that provides staff with an online training tool, including case studies and other features. The training is considered a key feature of the new integrity initiative at DOI. *Id.* Presumably broad outreach also helps deter abuses of scientific integrity within the agency by advertising the potentially high costs of this abuse.

[387] For example, one provision directs staff to "[d]ocument the scientific and scholarly findings considered in decision making and ensure public access to that information and supporting data through established Departmental and Bureau procedures – except for information and data that are restricted from disclosure under procedures established in accordance with statute, regulation, Executive Order, or Presidential Memorandum." DOI Scientific Integrity Guidelines, *supra* note 379, at 3.4.C. Other, even more ambitious (but unenforceable) goals include a requirement that employees commit to "clearly differentiate among facts, personal opinions, assumptions, hypotheses, and professional judgment in reporting the results" and to "fully disclose methodologies used, all relevant data, and the procedures for identifying and excluding faulty data." *See id.* at 3.7A.(7) and 3.7.B.(3). *See also id.* at 3.7A.(9) and 3.7.B. (1)-(4). The DOI integrity rules close with guidelines for staff serving on the boards for professional societies. Employees serving in these roles in their personal capacity do not appear to require approval, but they are urged to consult with ethic's officers to ensure their compliance with conflicts of interest and ethical standards. *Id.* at 3.9.B.(1). Approval is required of employees who wish to engage in these activities in their official capacity. *See generally id.* at 3.9.

[388] Interview with Staff, Union of Concerned Scientists, June 28, 2011; Interview with Staff, PEER, July 27, 2011; Interview with Department of Interior Staff, Aug. 29, 2011. Currently, all of the misconduct proceedings remain internal to the agency and are not publicly available or summarized. Interview with Department of Interior Staff, Aug. 29, 2011. DOI defends its position as necessary to protect the confidentiality of the accused and as a way to encourage employees to feel freer to identify problems early in the process, before they become media events. *Id.*

[389] Stakeholders argue that a fundamental mechanism for ensuring that the misconduct program will actually be utilized is the institutionalization of parallel protections for complainants through heightened whistleblower protections. Without heightened protections against retaliation, there are substantially reduced incentives for employees to report misconduct and a corresponding risk that the complaint process will be underutilized. See, e.g., Statement of Francesca Griffo, UCS, Interior Department's New Scientific Integrity Policy Must Trigger Significant Changes To Be Effective, Feb. 1, 2011, available at http://www.ucsusa.org/news/press_release/interior-departments-new-SI-policy-0495.html. Even in universities, incidents of research misconduct are grossly under-reported, presumably because of scientists' fears of retaliation as well as a perception of being viewed as non-collegial. See, e.g., Bob Montgomerie & Tim Birkhead, *A Beginner's Guide to Scientific Misconduct*, 17 ISBE Newsletter, May 2005, at 16. Finally, the public interest groups have criticized DOI for failing to adopt a more liberal communications policy that allows Department staff and officials to publish studies or speak with the media. They point to the FWS's more liberal publication policies, which allow FWS to speak openly provided they include a

addressing problems of scientific integrity.[390] However, DOI officials maintain that if one must start with the most serious problems, this policy is a first, strong step in the right direction.[391]

It is worth noting that after publication of the DOI policy, the National Oceanic and Atmospheric Administration (NOAA) published a parallel scientific integrity policy that is generally viewed as similar, but more beneficial.[392] Although NOAA is not within the three agencies under study here, because its guidelines build heavily on DOI's guidelines, because the National Marine Fisheries Service within NOAA is also responsible for the protection of endangered species, and finally because NOAA is viewed by public interest groups as considerably more effective, they are discussed briefly in closing.[393] NOAA's policy, like DOI's, establishes a scientific misconduct program,[394] but NOAA ultimately departs from DOI's policy in several important ways. First, NOAA commits to an annual, public reporting of misconduct allegations and

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disclaimer that they are not speaking for the agency. FWS allows its scientists to publish without management approval provided they add a sentence that the contents "do not necessarily represent the views of the U.S. [FWS]." Fish and Wildlife Service, Information and Expression: Part 117 Communicating Scientific Information, January 26, 2010, at § 1.4, available at http://www.fws.gov/policy/117fw1.pdf. The FWS' policies, they maintain, should serve as an example of what the entire Department of Interior should develop for staff scientists. DOI officials indicate that they are currently working on such a policy. Interview with Department of Interior Staff, Aug. 29, 2011.

[390] Specifically, misconduct is narrowly defined. Suppression of science and even bullying of staff to alter their findings or analysis might not be covered by the policy if these acts are not clearly intentional or reckless, yet these negligent acts are likely to be more prevalent than outright misconduct. The policy also does nothing to encourage good faith disagreements and debates among scientists within the Department.

At the time of this report, there was only one known allegation and it was filed by PEER, a watchdog group, based on personnel actions taken against a scientist researching the Arctic polar bear (dubbed Polarbeargate). Suspended Polar Bear Research Defended by Advocates, ScienceInsider, July 29, 2011, available at http://news.sciencemag.org/scienceinsider/2011/07/suspended-polar-bear-researcher.html. This incident is still under investigation by the Department's OIG. For a recent critical account of that investigation, see PEER, Polar Bear Probe Careens in New Directions, Oct. 26, 2011, at http://www.peer.org/news/news_id.php?row_id=1527. The allegations in PEER's case do not concern management's manipulation of the technical or scientific analysis, but rather the halting of a research biologist's work without cause and stigmatizing his research through a criminal investigation of undisclosed "integrity" issues. See PEER complaint, available at http://www.peer.org/docs/doi/7_28_11_Scientific_Misconduct_Complaint.pdf.

[391] Interview with Department of Interior Staff, Aug. 29, 2011.

[392] See, e.g., UCS, NOAA Boosts Scientific Integrity with New Policy, Dec. 7, 2011, available at http://www.ucsusa.org/news/press_release/noaa-boosts-scientific-integrity-1357.html. It is not clear why NOAA, rather than the Department of Commerce, developed these guidelines. The most likely answer is that NOAA was determined to put into place integrity guidelines and did not want to wait for the Department's leadership on this issue.

[393] In the development of its scientific integrity policy, NOAA solicited and responded to more than one thousand different, substantive comments on its draft policy. *See* NOAA's Disposition of Comments Received on Draft Scientific Integrity Guidelines 3 (Nov. 21, 2011), available at http://nrc.noaa.gov/Public_Comments_Disposition.pdf.

[394] *See* NOAA Scientific Integrity Policy, NAO 202-736D, Dec. 7, 2011, available at http://www.corporateservices.noaa.gov/ames/administrative_orders/chapter_202/202-735-D.html.

proceedings occurring within the agency.[395] This addresses some of the most vigorous public interest group complaints regarding DOI's policy. Second, NOAA attempted to draft its policy in a way that not only develops ambitious codes of conduct, but makes them easier to enforce because of their specificity and because the code of conduct is explicitly referenced as enforceable.[396] Finally, NOAA's integrity policy references a parallel communications policy that should allow agency scientists to speak and publish freely, provided they provide disclaimers when they are not acting in their professional capacity.[397]

b. EPA

In contrast both to NOAA and DOI, EPA has had a scientific misconduct program in place since 2000 (EPA's program was established in response to an OSTP federal policy developed under President Clinton).[398] A detailed line-by-line comparison of EPA's program with those developed more recently by DOI and NOAA was not attempted in this study, but EPA's program appears relatively complete[399] and the Health and Human Services (HHS) Office of Research Integrity site refers to EPA's program as a finalized program.[400]

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[395] *See* § 10.04 of *id.* ("NOAA's Chief Scientist . . . will provide annual public reporting . . . of the aggregate number of misconduct cases, the areas of concern, the affiliation of the individuals involved, how much accusations were investigated, and the number of findings of misconduct."). NOAA staff indicates that ultimately, because of the lack of a Chief Scientist, "the Chair of the NOAA Research Council will make this annual reporting available." Statement of NOAA Staff, Jan. 26, 2011.

[396] Violations must be intentional and reckless and constitute some form of scientific misconduct to be enforceable. *See* §§ 1.01(b) and 8.01 of NOAA Scientific Integrity Policy, *supra* note 394. Nevertheless, NOAA evinces an intent to include as scientific misconduct, violations of its code of conduct. See § 5.01 of *id.* (stating that "[a]ll staff identified in Section [3].02 *must* uphold the fundamental Principles of Scientific Integrity [Section 4], the Code of Scientific Conduct [Section 6], and the Code of Ethics for Science Supervision and Management [Section 7] . . .") (emphasis added); *see also* § 1.01 of NOAA, Procedural Handbook for Scientific Integrity, available at http://www.corporateservices.noaa.gov/ames/administrative_orders/chapter_202/Procedural_Handbook_NAO_202-735D_31Jan_2012.pdf (noting that "[a] finding of Scientific and Research Misconduct requires a determination by the Determining Official"; and under § 1.01(a), the determination is based on significant departures from the Code of Scientific Conduct or Code of Ethics for Science Supervision and Management). Since NOAA's policy contains ambitious principles for its code of conduct, this is an important feature of the guidelines. See NOAA Scientific Integrity Policy, §§ 4-7, *supra* note 394.

[397] *See id.* at § 4.05 (noting that "NOAA scientists may freely speak to the media and the public about scientific and technical matters based on their official work"); *id.* at § 4.06 (stating that "NOAA scientists are free to present viewpoints . . . that extend beyond their scientific findings to incorporate their expert or personal opinions, but . . . must make clear they are presenting their individual opinions").

[398] Apparently, neither NOAA nor the DOI complied with this 2000 policy, although presumably their recent programs now satisfy this directive. See HHS, Summary of Agency Misconduct Policies, available at http://ori.hhs.gov/federal-research-misconduct-policy. EPA simply cites to this existing program in its draft guidelines. EPA Scientific Integrity Policy at 10, available at http://www.epa.gov/osa/pdfs/epa_scientific_integrity_policy_20120115.pdf.

[399] EPA Scientific Misconduct Policy, available at http://ori.hhs.gov/sites/default/files/epapolicy.pdf .

[400] HHS Summary of Misconduct Policies, available at http://ori.hhs.gov/federal-policies. EPA's misconduct program was criticized in July 2011 by EPA's OIG, however, for inadequate training of EPA staff and insufficient updating and monitoring of the program. *See* EPA Office of Inspector General,

Also in contrast to DOI and NOAA, EPA has not been as diligent in preparing its science integrity guidelines. EPA's guidelines were distributed in draft in August 2011, six months after DOI's guidelines were final.[401] It is worth noting that there are relatively few accounts of overt suppression and scientific manipulation at EPA,[402] at least as compared with DOI's travails.[403] Although it may not fully explain EPA's apparent apathy with regard to complying with the White House's scientific integrity initiative, EPA may in part lack a sense of urgency with respect to this particular problem.

2. NRC's Procedures to Enhance the Scientific Integrity of its Decisions and its Staff[404]

The NRC has had relatively elaborate policies in place for several decades to preserve the scientific integrity of its decision-making process and staff; these policies were thus developed completely independently from President Obama's scientific integrity initiative.[405] The policies include opportunities for the airing and resolution of internal disagreements through informal and formal channels.[406] As elaborated below,

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Office of Research and Development Should Increase Awareness of Misconduct Policies (July 2011), available at http://www.epa.gov/oig/reports/2011/20110722-11-P-0386.pdf. Although EPA reports that it receives very few allegations of misconduct from within the agency, the OIG warned that this low rate could well be due to this insufficient outreach and training by the agency. *Id.* at 8.

[401] While the fate of these guidelines is an open question, the draft guidelines are very general and do not appear to create enforceable responsibilities or provide meaningful additions to EPA's existing commitments to scientific integrity, except perhaps for the appointment of a Scientific Integrity Officer and committee within the agency. EPA Scientific Misconduct Policy, *supra* note 399, at 2 and 9-10. EPA's draft policy also seems to studiously avoid offering specifics on communications and whistleblower policies, although there is a reference to the ability of EPA staff to publish and speak to the press, provided they indicate that it does not state the views of the agency. *See id.* at 5.

[402] EPA staff was apparently prevented from conducting an assessment of the adverse consequences of coal ash [when did this take place?], for example. Interview with PEER Staff, July 27, 2011. See EPA OIG, Agency Handling of Coal Ash, Sept. 8, 2008, available at http://peer.org/docs/epa/7_18_11_EPA_sci_suppression.pdf; (discussing EPA staff that report that EPA suppressed the risks of coal ash and lacked a robust process for reviewing drafts on the subject posted); see also EPA OIG Audit Report, EPA Promoted the Use of Coal Ash Products with Incomplete Risk Information, March 23, 2011, available at http://www.epa.gov/oig/reports/2011/20110323-11-P-0173.pdf; and PEER press release on the issue. http://www.commondreams.org/newswire/2011/07/18. Sixty Minutes also ran an investigation of these and related issues concerning the lax regulation of coal ash. See video clip at http://www.huffingtonpost.com/2009/10/04/coal-ash-on-60-minutes-un_n_309268.html.

[403] Interview with Former EPA Staff, Dec. 21, 2011. Note that "interference" with EPA science from OMB is, however, considered a potentially significant problem. *See infra* Section IV.A.1.

[404] This section benefitted significantly from comments and research assistance provided by Roland Frye.

[405] Recall that as an independent agency, the NRC is not bound by the President's scientific integrity initiative; NRC has in fact indicated it will not issue its own scientific integrity policies in response to the OSTP memorandum. Interview with NRC Staff, Oct. 26, 2011.

[406] Although communications policies and whistleblower protections were not studied here because they are significant enough issues to warrant a separate study of their own, it is worth noting in passing that NRC also appears to have a relatively liberal communications policy. According to interviewees and written (but somewhat ambiguous) policies, members of the NRC staff are allowed to speak with the media and publish their work without clearance, provided they do not ascribe their private views to NRC. Interview with NRC Staff, Oct. 26, 2011. The applicable Directive – Directive 3.9 – is unclear on this point, however. [Can we cite this directive?] It suggests clearance is needed to discuss NRC work, but

the NRC's approach to scientific integrity may well provide a model or best practices that could be used by other agencies for a broader range of issues, particularly with respect to encouraging diverse views and skepticism within the government.[407]

a. Encouraging Dissenting and Diverse Views

In order to facilitate the free exchange of ideas from within the agency, NRC has developed an elaborate "Collaborative Work Environment Program." This program consists of three separate policies, two of which are more than three decades old. These cumulative policies are intended to create an environment in which employees can disagree and publicly question decisions by those higher in the chain of command.[408]

Open Door Policy

NRC's first initiative in this program – the open door policy – was initially created in 1976[409] to provide staff with an opportunity to meet with supervisors beyond their immediate supervisor to discuss disagreements over technical issues and other matters.[410] The current directive provides that "[a]ny employee may initiate a meeting with an NRC manager or supervisor, including a Commissioner or the Chairman of NRC,

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then provides a disclaimer in settings where the publication or speech is not cleared by NRC. *See* NRC Management Directive 3.9 Handbook at 6, available at http://pbadupws.nrc.gov/docs/ML1100/ML110070679.pdf. NRC Management Directive 7.3 Handbook, at 7, available at http://pbadupws.nrc.gov/docs/ML0414/ML041410583.pdf only further muddies the waters. It states "All speeches, papers, or journal articles prepared by an employee for a professional organization that relate to NRC technical, legal, or policy issues should be reviewed in accordance with MD 3.9.(a)." This includes information about technical issues unless the information is deliberative or confidential. By contrast, if staff members purport to speak on behalf of NRC, their statements must be cleared through the agency. Management Directive 3.9. Staff members are also encouraged to participate in professional societies and other similar activities, although participation through NRC (under salary) requires supervisor approval. See Handbook for Directive 7.3 at p.6. In cases when employees participate in their private capacity, they may again proffer whatever technical or opinion statements they wish, provided they "make clear to the organization that the views expressed by the employee in the course of participation are not necessarily those of the NRC." *Id.*

[407] The DOE appears to have a differing professionals program as well, at least for technical issues. See DOE P 442.1 "Differing Professional Opinions on Technical Issues". Before concluding that the NRC program provides the most complete model, further research is recommended into both DOE and other agencies not studied in this report.

[408] The NRC has a webpage dedicated to this Collaborative Work Environment Program. The website states that "[i]n some organizations, being a "team player" means accepting management's preliminary views during the decision-making process and not "rocking the boat." Being an NRC Team Player does not mean those things. NRC holds its employees to a higher standard of involvement and responsibility for the decisions that are made." http://www.nrc.gov/about-nrc/values/open-work-environment.html.

[409] NRC Office of Enforcement, Review of the NRC Differing Professional View/Opinion Program, ML082190414, at 1 (2007) [hereinafter DPO 2007 Review].

[410] NRC, Management Directive 10.160, "Open Door Policy", available at http://pbadupws.nrc.gov/docs/ML0414/ML041490186.pdf. The policy indicates it was approved in 1991 and revised in 1997.

to discuss any matter of concern to the employee."[411] Managers are required to honor an employee's request for confidentiality unless the manager is a Commissioner or unless specific explicit exceptions make the promise of confidentiality impracticable.[412] Managers are also prohibited from retaliating against employees who utilize the program.[413] There is no formal tracking of the use of this policy, but there are now relatively vigorous agency efforts to educate staff about its existence.

Differing Professional Opinions

In 1980,[414] the NRC developed the "differing professional opinions" (DPO) program[415] to provide a formal process for "expressing differing professional opinions . . . concerning issues directly related to the mission of NRC" and to provide prompt resolution of these disagreements through an impartial review by knowledgeable personnel.[416] Staff members are allowed to prepare formal statements of dissent against decisions that have already cleared staff review and are effectively conclusive decisions of the NRC.[417] The dissent is not only placed in the record, but it is actually adjudicated to determine whether the official position of the agency should be adjusted.[418] The adjudication is conducted by a ad hoc panel.[419] The DPO submitter recommends potential candidates for this ad hoc panel, but panels are ultimately selected by the Office Director or Regional Administrator of the office of the submitter under guidelines that require one of the panelists to be an employee recommended by the submitter.[420] If an adjustment is

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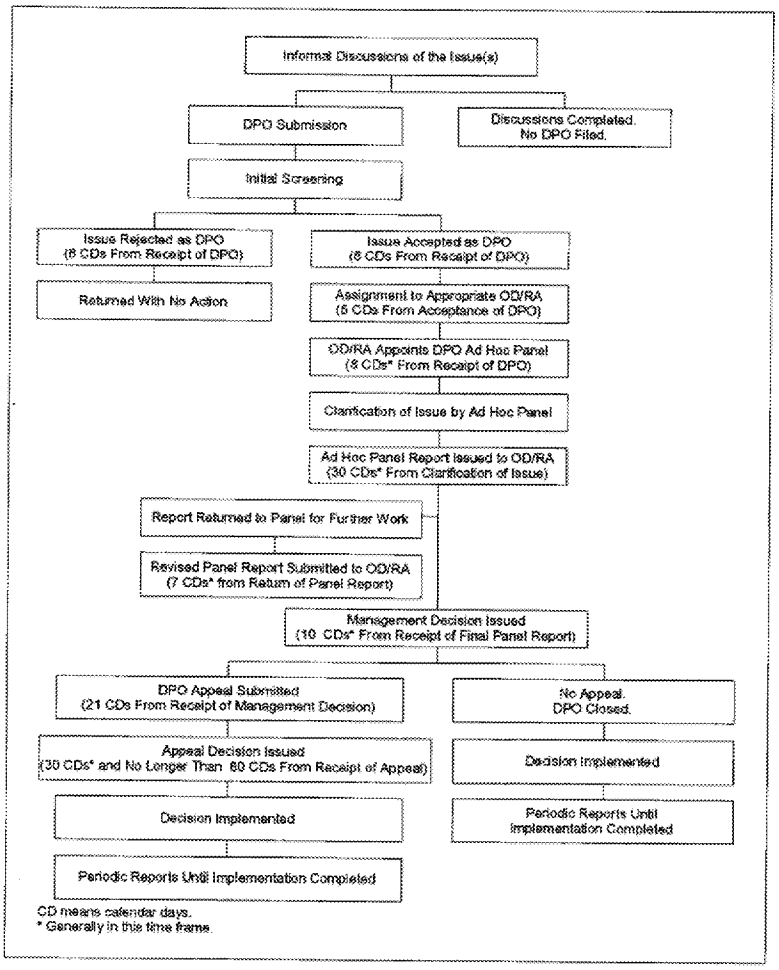
[411] NRC, Open Door Policy, Handbook 10.160, at 1, available at http://pbadupws.nrc.gov/docs/ML0414/ML041490186.pdf.
[412] *Id.*
[413] Open Door Policy, Directive 10.160, *id.,* at 2.
[414] DPO 2007 Review, *supra* note 409, at 1.
[415] NRC Management Directive 10.159, Differing Professionals Opinions Program [hereinafter DPO Program]. This Directive indicates it was initially approved in 1999 and revised in 2004.
[416] *Id.* at 1 of Directive.
[417] NRC Management Directive 10.158, Non-concurrence Process, at 1 of the Handbook, available at http://pbadupws.nrc.gov/docs/ML0706/ML070660506.pdf [hereinafter NCP] ("The DPO Program applies only to positions that are no longer under staff review, and has certain prerequisites and exclusions that do not apply to the NCP."). The DPO process is only available to those who make the case that the issues cannot be resolved through informal channels and also cannot be used to raise grievances covered under other programs. DPO Program, *supra* note 415, at 2 of DPO Handbook (listing "issues that do not qualify" for DPOs). There is a formal screening step that involves culling out the nonqualifying DPOs by NRC staff. *Id.* at 4-5. While there are provisions for protecting the confidentiality of the submitter of a DPO, *id.* at 4, the DPO process is not available to anonymous filers. *Id.* As with the open door policy, users of the DPO program are supposed to be protected from retaliation. *Id.* at 14-15. DPO submitters may also receive a certificate of appreciation at the end of the year for raising issues of concern. DPO 2007 Review, *supra* note 409, at v.
[418] Not surprisingly, the composition of this panel remains controversial in individual case and appears to be a continuing challenge in implementation of the program. *Id.* at 8-9. The DPO submitter recommends potential candidates for this ad hoc panel, but panels are ultimately selected by the Office Director or Regional Administrator of the office of the submitter under guidelines that require one of the panelists to be an employee recommended by the submitter. DPO Program, *supra* note 415, at 6-7 of Handbook.
[419] DPO review, *supra* note 409, 2007 at 6. Not surprisingly, the composition of this panel remains controversial in individual case and appears to be a continuing challenge in implementation of the program. NRC 2007 review at 8-9.
[420] DPO Program, *supra* note 415, of Handbook at 6-7.

required, this adjustment occurs through a formal hearing as well as an appeal process. A flow chart provides the numerous, discrete steps for the process (CDs=calendar days).[421]



Although the volume of DPOs in the NRC is not terribly high,[422] the NRC appears to take the program seriously and has struggled over the years to make it credible. An audit report by the NRC Office of the Inspector General in 2000 produced a

[421] The figure was copied from *id.* at Exhibit 2. While the DPO process is designed to allow issues to move expeditiously through the agency, in practice the process can take much longer. Generally, the process takes over six months and in at least one case dragged out over nearly two years. DPO 2007 Review, *supra* note 409, at 5 and 10-11. The extended time frame for resolving DPOs is a continuing problem for the program. *See also* NRC OIG, Review of NRC's Differing Professional View/Differing Professional Opinion Program, OIG-00-A-07, Sept. 20, 2000, at 15-17 [hereinafter OIG Report on DPO]. Appeals then can take another six months, more or less. *Id.*

[422] A 2007 assessment by NRC reports that no DPOs were filed in that calendar year, although a handful worked their way through the resolution and appeal process. DPO 2007 Review, *supra* note 409, at v. [If there were still no DPOs filed after the change in the program, it seems the change wasn't very effective. Is there any evidence of an increase in DPO filings more recently?]

relatively critical evaluation of the program.[423] The OIG concluded that there was underutilization of the program due to fears of retaliation and a perceived lack of effectiveness of the program.[424] Multiple subsequent assessments of the DPO program,[425] including the NRC OIG report published in 2000, have resulted in a number of changes to the program following the OIG's recommendations.[426]

Non-concurrence Process

Finally, in 2006 the NRC developed a Non-concurrence Process (NCP) that provides a formal mechanism for those in the line of concurrence (and even those employees not in the line but well-versed in the relevant issues) to formally lodge their non-concurrence with draft policies or draft documents.[427] The NCP is a complement to DPO since it applies to decisions that are still in draft and acknowledges that employees will not always concur and thus should be provided with a process to either opt out of concurrence or to file a statement of non-concurrence.[428]

The NRC's NCP process is not as process-intensive as the DPO process. The submitter first drafts a non-concurrence, the non-concurrence is shared with the document

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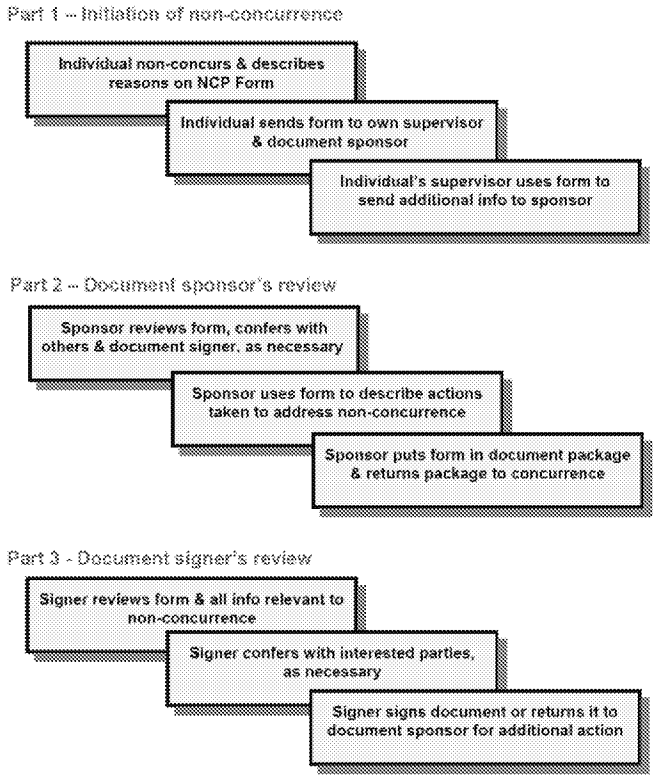
[423] The Report was initiated in part based on general reports by NRC employees that they did not in fact feel free to voice dissenting opinions despite the DPO policy. OIG Report on DPO, *supra* note 421, at 3-4.
[424] *Id.* at 9. The OIG found that more than fifty percent of the (27) DPO submitters that OIG interviewed believed that some form of retaliation had occurred after filing a DPO. *Id.* at 18. Additionally, the guidelines for filing DPOs retained the submitter's supervisors in the chain of command, which was problematic in terms of chilling engagement, increasing the risk of retaliation, and impairing the fair resolution of the disagreement. *Id.* at 10.
[425] The agency has conducted its own internal evaluation of the program over the years, including annual reviews. The DPO program requires that NRC conduct an in-depth annual program review, including audits of office and regional performance records. DPO 2007 Review, *supra* note 409, at 3. For a summary of the more extensive reviews of the program, see *id.* at 1. There are some boilerplate similarities between these annual reports, but the NRC does collate the data from the prior year and summarize at least the nature of the DPOs and their disposition, as well as identify areas for ongoing improvements and reform.
[426] These changes include improving employee understanding of and comfort with the program, broadening the scope and coverage of the protections (e.g., to contractors), and building in more sources of feedback and tracking of the programs. See DPO 2007 Report, *supra* note 409; NRC, Differing Professionals Opinions Program 2006 Program Review, ML071160295 [hereinafter DPO 2006 Report]. Employee outreach and training appear to be the highest priorities. DPO 2007 Report, *supra* note 409, at v; DPO 2006 Report, *id.*, at v. To that end, NRC has established DPO liaisons in each office to facilitate use of the program. DPO 2007 Report, *supra* note 409, at 22. In the annual review process, NRC also surveys DPO submitters, panel members, and office members for feedback on the process and includes this information in the annual assessment, *see id.* at 4 and Appendix C, although the results of this information were difficult to trace in the written annual report. NRC annually also provides a brief summary of each of the DPOs that have been filed and their current status in its annual, public report. This information provides a valuable window into the nature of the disagreements that are emerging through this program. See Appendix D and E of the 2007 and 2006 Review reports, *supra* note 409 and *id.,* for example.
[427] NPO, *supra* note 417.
[428] *Id.* at 1 of Handbook. A sample of a Non-concurrence statement is provided at Appendix D.

sponsor who then describes any action taken, and both forms are then shared with the document signer for his/her consideration.[429]



Retaliation is explicitly discouraged in this policy by threats of disciplinary action in accordance with the NRC's policy. Employees are also provided a mechanism for submitting grievances if they perceive they have been retaliated against.[430]

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[429] The Figure is from *id.* at Exhibit 1. *Id.* at 2-3 of Handbook; *see also id.* at 6-11 (providing more complete guidelines on the process).

[430] *Id.* at 13. A 2010 OIG report on the non-concurrence process identified several ways that the process could be improved. As an introductory matter, OIG noted that the NCP program was still in an interim status, despite the initial intention of NRC to finalize it within a year after adoption (i.e., 2007). OIG Audit of NRC's Non-Concurrence Process, OIG-11-A-02, Oct. 7, 2010, at 1-2, 10, and 28. The OIG also noted that NRC had dedicated very little in the way of staff or resources to either the DPO or NCP programs. "[T]he fiscal year 2010 budget is $3000 for the entire Differing Views Program [Open Door, DPO, and NCP programs], and 1.5 full-time equivalents are designated to collectively support the Differing Professional Opinions Program and the nonconcurrence process." *Id.* at 1. The crux of its review , however, highlighted the need for clearer guidelines for how employees could use the process. OIG reported, for example, that "[i]nterview results revealed that 70 percent of filers, document sponsors, and document signers did not understand their respective rights, roles, and responsibilities in relation to the non-concurrence process as compared to that described in [the NCP] policy." *Id.* at 7. Clearer guidelines and more effective employee training constituted the primary recommendations for remedying the

b. Continuing Challenges

The most substantial impediment to the NRC's efforts to provide an open workplace stems from employees' concerns about possible retaliation[431] and perhaps a natural inclination of employees to seek to "get along" and not anger colleagues or (even more so) supervisors.[432]

The NRC has taken a number of actions to address these concerns, including issuing awards to DPO submitters,[433] publicizing success stories,[434] buttressing its anti-retaliation oversight processes and policies,[435] and attempting to publicize the successes of DPO submitters.[436] The NRC also has policies that deter retaliation by levying sanctions against those who retaliate against another employee for expressing his/her concerns.[437] And the NRC offers redress to employees who have been retaliated against.[438]

There is also evidence that the processes are being used. For example, a nonconcurrence filing served as one of the triggers for the recent controversy over the NRC Commissioner Chairman Jackzo's management style.[439] Indeed, in his statements

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shortcomings in the program. *Id.* at 10-12. OIG noted that the fact that the NCP was suspended in interim status for years may have aggravated these problems since NRC did not develop a tracking system to identify problems during this transitional period. *Id.* at 13-16. This extended interim status may also send a signal to employees that NRC does not take the program seriously.

NRC's Office of Enforcement appears to be addressing each of the recommendations, although the NCP program is still not finalized. *See, e.g.*, Letter from Stephen D. Dingbaum to R. William Borchardt re Status of Recommendations, Sept. 9, 2011; see also Letter from Roy P. Zimmerman, Director of Office of Enforcement to Stephen Dingbaum, July 27, 2011, reporting on status of OE's response to the OIG's recommendations. It appears that NRC also has not developed a tracking system for the non-concurrences and DPOs, and thus the availability of a public tracking system seems even more remote. DPO Review 2007, *supra* note 409, at 11-12. Some of these NCP documents are nevertheless available through searching the ADAMs document retrieval system on the internet. Filers can indicate that they wish their filings to be made public, and it appears that by checking this box, the non-concurrence is then shared more generally through ADAMs (with the appropriate redactions for confidential information). *See* page three of the Non-Concurrence Process Form, NRC Form 757.

[431] In its review, NRC reports that "[t]he OIG 2005 NRC Safety Culture and Climate Survey (referred to as the safety culture survey) found that approximately one-third of employees believe submitting a DPO has a negative effect on career development at the NRC." DPO 2007 Review, *supra* note 409, at 15.

[432] In the controversial decision to over-ride a technical decision that Davis-Besse should be shut down, for example, several employees expressed their support for a shut-down, but indicated that they did not feel strongly enough to file a DPO. NRC OIG, NRC's Regulation of Davis-Besse Regarding Damage to the Reactor Vessel Head, Dec. 30, 2002, at 13. It is not clear from the OIG report whether they were pointedly asked whether they would file a DPO. It is also not clear what these employees would consider significant enough to warrant filing a DPO.

[433] DPO 2007 Review, *supra* note 409, at 14.

[434] *Id.* at 23.

[435] *Id.* at 14-15.

[436] *Id.*

[437] NRC Management Directive 10.99, cited at p.2 of the Open Door Policy Handbook, *supra 410.*

[438] These employees have remedies through either a negotiated or a formal grievance procedure. Management Directive 10.101, cited at *id.*

[439] *See* Appendix D for a copy of this nonconcurrence filing.

in response to a recent congressional investigation, Chairman Jackzo reiterated the usefulness of these submissions, reporting that two DPOs and twelve formal nonconcurrences had been filed within NRC during 2011.[440] While this highly publicized nonconcurrence statement may not be typical, and in any event did not involve disagreements over technical issues, it provides a formal mechanism for staff to publicly question management that appears to be unusual in the federal government.

However, in at least some other settings where these open processes should, in theory, have been useful to elevate staff concern about technical issues embroiled in the NRC's decisionmaking, they were not used.[441] A focused study of the underutilization of these processes at past, critical points in NRC decision-making might provide added valuable information about how to reinforce the effectiveness and use of these programs.[442]

C. Summary of the Findings

Rather than attempting to summarize this section through text, a summary table is provided below that provides a thumb nail sketch of the findings with respect to a number of process-related factors. The analysis section then attempts to draw lessons from these various agency processes.

	EPA NAAQS	**EPA Pesticide**	**EPA IRIS**	**FWS listing**	**NRC informal rules**
# of chemicals/species/ rules	6 chemicals	1000 chemicals (50/year)	500 chemicals	Dozens species/year	Unclear how many rules/year
Nature of the scientific evidence	Large and robust body of relevant research; mostly academic and published; publicly available in journals	Generally heavily industry-based; sometimes quite limited, but meets minimum standards of information necessary for an assessment	Often industry-based; sometimes quite limited	Usually considerably more limited than the evidence available in EPA's program and some of it is not published	Engineering and technical; Operational information is often critical
Statutory Constraints on Decision	5 year review period; must use FACA science advisory board for review	All pesticide registrations must be reviewed every 15 years	None	Response to petition in 90 days; proposed decision within 1 year	Mandatory review by science advisory boards for some licensing and informal rulemakings
PreNPRM comment opportunities	Generally 7 separate public comment periods	Typically 2 documents, each subjected to public	One public comment period; the recommended dose	None	In some informal rulemakings, there is an

[440] Jackzo letter to Issa, dated Dec. 12, 2011, at p.1.
[441] *See supra* note 432.
[442] From the research conducted for this report, there was no specific lessons learned study of why these open workplace programs were not used in some of the more publicized incidents that question the technical veracity of NRC decision-making. A lessons learned report that specifically examines why DPOs were not filed in Davis-Besse, etc. might shed light on these fundamental questions.

	on 4 documents	comment before the proposed decision	is not a rulemaking, however		extensive workshop. There may be other outreach activities as well, depending on the regulatory decision.
Are scientific analyses and related technical documents that support proposed decision publicly available?	Yes. Multiple drafts of 4 consecutive reports; external peer review comments; EPA considers all comments and responds to CASAC comments	Yes. Planning and risk assessment drafts; summary of comments; EPA's response	Draft assessment and revised assessment; all comments, including interagency comments; EPA response to all comments	Yes, but only after the proposed rule is published	Yes. Commission papers prepared by staff and other supporting documents are almost always publicly available
Internal peer review	Yes	Yes	Yes	Staff and management collaborate on final product	Appears yes; supervisory chain reviews and signs staff paper
External Peer review	Multiple reviews by mandatory advisory body	Generally no	Yes, but level of peer review depends on size of assessment	Yes, individual peer reviewers	Often yes, standing advisory bodies required by statute; One standing body has broad authority to recommend projects
Role of OMB	Yes, it clears the proposed and final rules	OMB only involved to the extent the Paperwork Reduction Act is triggered	Yes, 2 rounds of comments on assessment	Yes, but OMB clears the proposed and final rules for critical habitat only	OMB only involved to the extent the Paperwork Reduction Act is triggered
Role of interagency review	Included during public comment	Included during public comment and informal contacts	Two dedicated stages to interagency review	Included during public comment	No evidence; presumably included during public comment
Stopping rules for emerging science	Yes, formal policy	No	Yes, generally closed after draft assessment	Unclear, but short timeframe likely makes stopping rules unnecessary	Unclear; Commissioner structure likely facilitates authoritative decisions
Stopping rules for debate	Informal closure by advisory board	EPA determines as needed	Complicated by interagency review	Short timeframe makes it non-problematic	Unclear; See above re Commissioner structure
Authorship or attribution of staff-authored reports	Yes - dedicated acknowledgements on reports; authorship types of rights	Yes - team authorship on reports	Yes - dedicated acknowledgements on reports; authorship types of rights	Limited - attribution to field office	Minimal - Manager signs staff papers
Reference list provided to peer and public reviewers	Yes	Yes	Yes	Yes, although reference list may need to be requested from agency contact in Fed. Reg.	Yes, included in staff papers, technical documents, and proposed rules
Availability of supporting	Studies available through an	Limited availability:	Generally available, although availability	Generally available, although availability	Mixed availability: 1)

literature to public	electronic database	Unpublished studies by manufacturers require pre-clearance and cannot be viewed until after the registration decision has been made	of the unpublished studies was not investigated	of the unpublished studies was not investigated	Yes, in general for informal rulemakings; 2) No (or limited) for license decisions, at least with respect to operator information
Ability to compare changes in proposed decision against underlying scientific analysis	OMB review can obscure this to some extent	Yes, although it is not clear that all policy-relevant choices are accessible to the nonscientist	Generally yes; although no to the extent that interagency review impacts the initial scientific analysis	It depends on the analyses included in the administrative record	Yes, for informal rulemakings
Dissent policies for staff scientists	Informal, in part built into authorship	Informal, in part built into authorship	Informal, in part built into authorship	Informal, but dissents have been placed in the record in one case	Yes, formal program
Misconduct policies	Yes	Yes	Yes	Yes	Does not appear there are misconduct policies, although they would seem to be almost completely covered by broader dissent and nonconcurrence policies

IV. Analysis and Recommendations

Despite a wealth of bad publicity, the evidence in this study reveals that agencies have made considerable strides in ensuring the rigor and transparency of their integration of science into regulation. Some agencies are explaining how policy and science intersect in their regulatory projects in sophisticated, yet accessible ways.[443] Likewise, some agencies are establishing processes that ensure both expert and internal review of their work, and, in connection with these processes, are providing a public record of the changes they make in response to peer review and public comment.[444] Agencies are also establishing integrity policies that allow their staff to raise scientific differences with supervisors through various informal and formal mechanisms.[445] Finally, agencies increasingly use the Internet to post the reference list used in their decision-making and

[443] This is exemplified by the policy assessment in the NAAQS process, see Section III.A.1.a., *supra.*
[444] In the IRIS assessment, interagency comments as well as peer review and public comments are all placed in the record and EPA provides a response to all of these comments in appendix A of its assessment. See Section III.A.1.b., *supra.*
[445] The NRC's collaborative workplace program provides a model example. *See* Section III.B.2, *supra.*

even to make copies of documents consulted during that process readily available through databases and hyperlinks.[446]

This study also reveals features of agency decision-making processes that would benefit from further improvements. First, while some agencies are innovating in their use of science, little of this innovation is recorded or shared across the government. One set of recommendations advocates for more systematic collation of innovative approaches to regulatory science and then catalogs the particularly impressive procedures that emerged from this particular study as either best practices or innovations. While scientific and policy circumstances vary from program to program, thereby limiting the ability to apply one agency's innovations to other agencies in a mechanical way, certain minimal best practices can and should be adopted by all agencies engaging in scientific decision-making.

Second, the study exposes a number of external constraints on agency decision-making processes that limit the ability of the agencies to improve their decision processes in keeping with the President's scientific integrity initiative. A second set of recommendations advocate various forms of action with respect to these external barriers to good regulatory science. In this study alone, for example, a Clinton Executive Order caps the number of discretionary advisory committees that agencies can form; statutory barriers impede the public's access to studies that informed the agencies' scientific analysis; presidential review processes can alter the science underlying a rule but are often nontransparent; and abbreviated statutory deadlines for rulemakings impede the ability of the agencies to develop rigorous and transparent processes for integrating science into regulation.

Third, in a number of health and environmental programs agencies necessarily must rely on scientific research produced by regulated parties, yet the agencies do not subject it to vigorous oversight processes. At the very least, this privately produced research should be subjected to the same types of requirements imposed on research published in scientific journals and research produced with federal monies.

Fourth, the findings clearly reveal the need for additional study of regulatory science. The agencies' use of external peer reviewers, for example, is vital to ensure both the rigor and transparency of the integration of science into policy, yet very little is understood about this feature of agency decision-making. This and other research topics are integral to both an understanding and reform of the agency's use of science for policy. A few future topics emerging from this study that are highly recommended for future study are listed in the final section.

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[446] EPA has established a large database of all of the studies used to conduct the NAAQS review. *See* Section III.A.1.a., *supra*.

A. Capitalizing on Agency Successes

This section highlights various procedures and other innovations utilized wholly within agencies that significantly advance the "transparency in the [agency's] preparation, identification, and use of scientific and technological information in policymaking."[447] These approaches, by and large, have neither been cataloged nor publicized; the report thus serves a valuable service simply in publicizing these advances. The section begins by noting this dearth of investigations of agency successes in science-based regulation and the resultant lack of models of particularly good integration of science into decision-making in the general literature. Several recommendations seek to address this oversight, at least preliminarily.

The second set of recommendations then identify widespread and seemingly fundamental features of nearly all agency regulatory decisions that seem to rise to the equivalent of best practices for science-intensive regulation. Ideally, these practices operate almost as presumptive prerequisite for science regulation that agencies should be expected to explain when they are not followed.

The third and final set of recommendations identifies innovative approaches found within the agencies that seem to significantly strengthen agency regulatory programs involving scientific or technical information. While each innovation offers an approach to regulatory science that generally advances both the transparent and robust incorporation of technical information into regulation, this final section refrains from hailing these innovations as clear "best practices" since the contexts and constraints on agencies are so variable that there will be situations in which one or more of the innovations is not practical or even advisable. Further experimentation and study of these practices will help fine tune and further develop these approaches for their more extensive use in the future. For the time being, however, these approaches are offered simply as innovations worthy of agency consideration.

1. Sharing Information on Agency Approaches

a. Providing a clear explanation of agency decision processes

In all programs studied, the flow charts and processes uses by agencies to incorporate science into their decisions had to be recreated from scattered documents and interviews. The processes remain particularly obscure for the FWS's listing and critical habitat designation decisions and to some extent for the NRC's regulatory process. Even for heavily revised programs like the IRIS process, which have been diagramed multiple times in the course of congressional investigations, GAO reviews, and critical

commentary,[448] the agency's incorporation of science into the assessment process is generally not explicated at the level of detail that is useful for understanding whether all of the best practices and innovations detailed in this study have been followed.

When practicable, agencies should provide an accessible summary of their processes for incorporating science into specific regulatory programs. Such an articulation of these basic processes is consistent with the President's directive that "[t]he public must be able to trust the science and scientific process informing public policy decisions."[449] An explication of agency processes should also guide staff and provide those outside the agency with an understanding of how science is being integrated into regulatory decisions.

An agency's explanations should include a description of how the agency conducts its literature search and the availability of those results, the analytical process the agency used to integrate scientific information into its decision-making, the respective role of scientific staff and political management in producing technical documents, the opportunity for robust internal discussions that encourage diverse viewpoints and dissent, the assurance of adequate peer review of agency technical documents, and the articulation of principles at the beginning of the analysis that guide the agency's decisions about how to incorporate the appropriate scientific literature at key points in the process, etc. In situations where the processes are particularly divergent, [450] the agency should explain why the existing process is on net beneficial to advance the agency's goals.

Agencies should provide the public with an accessible description of the process that they utilize for integrating science into their decisions for each of their science-intensive programs. This includes a statement of how an agency evaluates the scientific information used in its analysis; how the agency makes that information available to reviewers and the public; how the analysis is reviewed by experts and interested parties; and how the agency ensures that the final decision can be compared against the scientific record.

b. Highlighting Agency Innovations

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[448] *See, e.g.,* Center for Progressive Reform, Corrective Lenses for Iris, Sept.2010, available at http://www.progressivereform.org/articles/IRIS_1009.pdf.

[449] Obama Memorandum, *supra* note 6, at 1.

[450] Particularly in the case of IRIS, EPA should be required to explain why interagency review occurs twice during the preparation of a risk assessment, for example, while public and expert review occurs only once. Indeed, given the fact that most of the participating agencies are stakeholders and engage out of a concern about compliance costs or potential liabilities, it seems fully appropriate for their engagement to be reserved to the single public comment period as is the case for interagency review in the other agency processes studied here. See data summary in Section III.C., *supra*.

In this study, the agencies did not publicize their innovations or successes. Yet as this study has revealed, many agencies have developed innovative mechanisms for ensuring transparency in their use of science, and they should advertise and disseminate these best practices for consideration by other agencies.

As part of its scientific integrity initiative, some centralized agency, like OSTP or the standing committee of the NAS Science, Technology, and Law should play a leadership role in publicizing what the agencies are doing especially well with respect to the integration of science in regulation, particularly when their approaches might be useful to other agencies. In conducting this work, this central analyzing body could borrow from ACUS's other best practices project, which spotlights agency innovations, provides short summaries of these innovations, and offers a forum wherein agencies can describe their innovations.[451] Since these agency successes in the use of science are ground-tested and have been improved over time, they should be particularly instructive to other agencies.

This central analytical body or even the EPA Air Office should also produce a short, lessons-learned report based on the development of the NAAQS process. Since Section 109 of the Clean Air Act provides little room for discretion and policy judgment, the EPA's effort to identify uncertainties, assumptions, and choices in these scientific analyses is particularly instructive for other agency programs. It is also worth noting that every agency employee interviewed in the study who was not affiliated with the NAAQS process, with one exception, was unaware of the details of the NAAQS process, much less the content of these reports. Stakeholders who were familiar with the strong reputation of the NAAQS program were similarly unfamiliar with its details. The obscurity of the NAAQS process to those working on science-intensive regulations outside of the air pollution control arena is unfortunate and can be easily remedied with this type of publication.

Without an effort to learn from the success stories, other agencies may needlessly develop regulatory processes from scratch when there is a ready-made, time-worn approach in use that provides a ready template for their efforts. Focusing on agency innovations also publicizes the agencies' successes and helps to counterbalance OIG, GAO reports, and congressional hearings that, by design, tend to focus almost exclusively on problems.

OSTP, a standing NAS Committee, or some other body should take responsibility for identifying and publicizing the innovations developed by agencies for transparently incorporating science into their regulatory decisions.

[451] See ACUS best practices at http://www.acus.gov/best-practices/

2. Developing a Set of Best Practices for Science-Intensive Regulation

Through an examination of agency processes, several features continually stand out as a basic staple in the agency's use of science for regulation; these process features should be considered presumptively required unless there is a reason against their use in a particular regulatory setting. In this subsection, a few process features are identified as "best practices" for science-intensive regulatory decisions. Since most agencies currently lack clear statements of their existing processes for incorporating science into regulation (*see infra* Section IV.B.8 for a recommendation addressing this omission), identifying several of these best practices helps draw out and might even fine tune some of these unrecorded procedural details, while attempting to preserve flexibility in how they are followed. Since these best practice principles impose few, if any new requirements, moreover, they should involve very little added time, resources, or paperwork for the agencies. Indeed, following the best practices might ultimately reduce the time and resources expended on science-intensive regulations since these steps are intended to make the agency's decision processes more streamlined and transparent.

Each of these best practices draws its authority from three important, overlapping sources. First, each best practice is linked to the directives in President Obama's and/or the OSTP's memoranda on scientific integrity. These White House goals are considered fundamental, at least in abstract terms, to good agency practice with respect to the incorporation of science into policy. Moreover, each of these best practices is being implemented in all of the agencies under study; thus they are capable of being put into practice and deemed important enough to be utilized in at least one science-intensive regulatory program.

a. Availability of a references list and the underlying references

One of the basic expectations for regulatory science is that the agency should identify all of the literature it consulted (including, when scientifically appropriate, the relevant literature it ultimately rejected) in its scientific analysis. The agency should also ensure that this literature is, if at all possible, available to the public and peer reviewers.[452] Agencies cannot always satisfy this expectation; but because it is a

[452] *See, e.g.*, *id.* at 1 ("Except for information that is properly restricted from disclosure . . . each agency should make available to the public the scientific or technological findings or conclusions considered or relied on it policy decisions"); Holdren Memorandum, *supra* note 7, at 2 (principle I.3. stressing "[o]pen communication among scientists", "the free flow of scientific and technological information" and directing agencies to "expand and promote access to scientific and technological information by making it available online in open formats."); see also Bipartisan Center report, *supra* note 2, at 41 (recommending, among other things, that "once an agency has opened a docket on a rule or guidance that will draw on scientific studies, it should make available on the Web a list of the studies it is reviewing and should regularly update the list").

fundamental obligation, agencies should explain when they are unable to provide a list of references used in the analysis or make unpublished studies publicly available.

Accordingly, where agency time and resources permit, agencies should attempt to post not only the bibliography of the literature it utilized in conducting its analysis, but also the articles themselves, particularly the unpublished studies. To the extent that the agency is not able to post unpublished studies – due to statutory prohibitions like the one in FIFRA mentioned above – they should articulate these limitations. Moreover, to the extent that copyright protections prevent this posting, then agencies should seek permission to disseminate the work, and if this fails then the agency should where possible provide the public with information on how to request the information directly from the author. Ensuring that the underlying research is available is a basic component of scientific transparency and this applies with equal force to regulatory science.[453]

For the agency programs examined in this study, it appears that the agencies generally provide bibliographies and reference lists that support their regulatory projects. EPA's NAAQS program again provides the high water mark, reinforced through its extraordinary HERO literature base which provides public access to the underlying studies, or at least the abstracts as permitted by copyright law.[454] EPA, DOI, and the NRC generally provide bibliographies for their rulemakings (this feature was not examined in detail at the NRC), although in some cases the public or reviewers will have to go through extra steps to gain access.[455] Like EPA, the NRC has produced a publicly accessible online library that provides the public with instant access to many of the NRC documents that support its science-intensive rules, including many unpublished studies and staff reports cited in its decision documents.[456]

Despite these positive developments, there do not appear to be formal policies or a universal commitment, even in the programs studied, to ensure that the supporting literature is identified and reasonably accessible to the public in all cases. A review of several proposed rules at the FWS, for example, revealed that not only the references, but the reference list itself had to be requested from (or perhaps viewed at) the field office. Since these studies are apparently already compiled for purposes of internal review,[457] it would seem relatively easy to make them publicly available through the internet. Indeed, one staff indicated that FWS is currently attempting to provide this kind of access.[458]

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[453] *See supra* notes 29-30 and accompanying text (discussing these values in basic science).
[454] *See* Section III.A.1.a.
[455] FWS does not include the bibliography in its regulatory analysis published in the Federal Register and it is only sometimes posted online in the regulatory docket. As a result, the public must request the reference list from the field office. *See* Section III.A.2, *supra*.
[456] *See* Section III.A.3.
[457] *See* Hall email, *supra* note 220, at 1 (describing this arrangement).
[458] Interview with FWS Staff Member, Field Office, Feb. 15, 2012.

It could well be that all of the agencies will soon be developing extensive databases of the studies they use for regulation, such as posting bibliographies online with hyperlinks. Indeed, some of this is already being done.[459] Yet given the explicit prominence that the availability of underlying research plays both in basic science and in the President's directive, this type of literature accessibility should be considered an exected feature of any rigorous regulatory program. The absence of a reference list or the inaccessibility of references generally will deserve explanation.

> **In supporting its science-based regulatory decision, an agency should identify and make publicly available a list of the scientific literature it consulted, including even the literature it rejected when it is material to the scientific analysis, as well as the literature it relied upon. This reference list should be posted online whenever possible.**
>
> **When an agency relies on studies that are not published, it should post the studies on its website as soon as is practicable, subject to copyright and other legal restrictions. When this public transparency is not possible, these restrictions should be explained in the agency's individual analyses and possibly more generally in describing its regulatory program for the public.**

b. Ensuring Some form of Expert Peer Review of Science-Intensive Regulatory Products

Peer review is a cornerstone of the scientific process, and some level of expert review is similarly integral to ensure the vigorous scrutiny of agency work.[460] Both the President's directive and the Holdren memorandum on scientific integrity explicitly reference this critical role of expert peer review.[461] OMB's Peer Review Bulletin also underscores the value of expert review to the agency's use of science.[462]

In the federal government, agencies have at their disposal multiple tools for engaging this expert peer review, both within the agency and using external reviewers. These tools include: a) developing quality control processes, such as technical audits, for

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[459] See, e.g., EPA, IRIS Toxicological Review for Hexachloroethane (Sept. 2011), available at http://www.epa.gov/iris/toxreviews/0167tr.pdf (providing a hyperlink in the reference list that allows the reader to click their way to each of the references cited).

[460] *See supra* notes 29and 43 accompanying text.

[461] *See* Obama Memorandum, *supra* note 6, at 1 (directing that "[w]hen scientific or technological information is considered in policy decisions, the information should be subject to well-established scientific processes, including peer review where appropriate, and each agency should appropriately and accurately reflect that information in complying with and applying relevant statutory standards"); Holdren Memorandum, *supra* note 7, at 1-2 (agencies should develop policies that ensure "that data and research used to support policy decisions undergo independent peer review by qualified experts, where feasible and appropriate, and consistent with law"); *see also* BiPartisan Policy Center, *supra* note 2, at 17 (recommending that "[f]ederal agencies should use scientific advisory committees to the maximum extent possible to review the science behind regulatory policies"); National Performance Review, Sept. 1993, Improve Regulatory Science, at 61 (recommending the use of external advisory boards).

[462] *See* OMB Final Information quality Peer Review Bulletin at 2, 3 (Dec. 2004),

more routine agency decisions; b) developing formal or informal processes for intra-agency review; and c) utilizing external peer review by soliciting individualized reviews or assembling expert review panels. In some settings, peer review panels are even required by statute.[463]

This study reveals that some agencies utilize these peer review tools extensively and in ways that go well beyond the bare minimum requirements set forth by statute and OMB's guidelines. For example, while EPA is required to engage CASAC in the review of its proposed revision to an air quality standard, EPA is not required to have each of its staff reports reviewed multiple times by this science advisory body.[464] Similarly, EPA relies on external peer review as a critical step in its IRIS assessments, but there is no legal requirement that it solicit this external review for most of its assessments.[465] Even when pressed by very short statutory deadlines for decisions, the FWS incorporates external peer review into its listing and habitat designation decisions.[466] And it has persisted with this commitment to external peer review in the face of both congressional and stakeholder opposition.[467] Interviews with agency officials in all three agencies reinforce the high value they place on expert peer review for their regulatory work, particularly with respect to the value of external peer review.[468]

The agencies studied here fared very well in their commitment to expert peer review, but their records were not perfect. At least the NRC was criticized by its Inspector General for failing to develop validation and quality control processes for the information collected by agency staff in their review of permit renewals and amendments.[469] Indeed, it seems likely that if there are lapses with regard to peer review, they may occur in programs that involve more routinized licensing decisions. EPA's pesticide program, which does engage internal expert review of the agency's scientific projects, was also criticized by one anonymous scientist for not engaging external expert peer reviewers in the review of its risk assessments.[470] The merits of the agencies' choices will only become clearer once they are identified and explained.

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[463] *See* Section III.A.1.a. and A.3, *supra.*
[464] See 42 U.S.C. § 7409(d)(2).
[465] While some IRIS risk assessments are likely "influential" under OMB's peer review bulletin, it seems unlikely that all of them are. *See* OMB Final Information quality Peer Review Bulletin at 2, 3 (Dec. 2004), available at http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf. Yet EPA engages external peer review in all the IRIS assessments. *See* Section III.A.1.b., *supra.*
[466] *See* Section III.A.2., *supra.*
[467] *Id.*
[468] Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012; Interview with EPA Staff, National Center for Environmental Assessment, Jan. 18, 2012; Interview with EPA Staff, National Center for Environmental Assessment, Feb. 3, 2012; Interview with FWS Staff, Endangered Species Program, Jan. 9, 2012; Interview with NRC Staff, Oct. 26, 2011.
[469] *See* Section III.A.3., *supra.*
[470] *See* Section III.A.1.b., *supra.*

Although some form of expert peer review, whether conducted wholly internally or externally, is considered fundamental in the agencies' use of science for important regulatory projects, the actual tools that the agencies utilize for any given science-based project defy generalization. With the single exception of OMB-prescribed expert peer review for "influential" scientific assessments[471] and scattered congressional mandates that require science advisory board review in narrow regulatory settings,[472] there also are few minimum requirements placed on agencies that limit or frame their ultimate choices in engaging this expert review. This flexibility seems wholly warranted given the many factors at play.[473]

Given the diverse regulatory settings that benefit from peer review, prescriptive requirements for expert peer review should be avoided, at least based on the current knowledge of these processes. Agencies should explain why they select a particular approach to expert review in their decision-making process. But beyond this explanation requirement, at this point the range of practices, uses, and needs for peer review simply defy generalization and hence more specific requirements.

Conversely, however, restrictions that limit the agencies' use of external peer review should be eliminated. A prior recommendation discusses how caps on FACA committees and perhaps other features of the implementation of FACA may impede the ability of agencies to enlist external peer review.[474] These and any other barriers identified by the agencies and OSTP with respect to limiting agency peer review options should be removed or at least reduced to the extent possible.

Beyond removing barriers, a second recommendation is to establish as a best practice a simple expectation that agencies should, whenever practicable, explain their peer review choices in individual programs when doing so will not impose a significant burden on the agency This expert peer review need not involve external review, but at a minimum should include some quality control by agency technical experts.

> **Consistent with President Obama's directive, agencies should be encouraged, not impeded, from having their scientific analyses reviewed by other experts, even if this oversight occurs wholly inside the agency. Any limitations on an agency's ability to have scientific work reviewed by scientific experts should be actively discouraged. Additionally and when possible, agencies should endeavor to explain how they ensured the rigorous review of their scientific products for each regulatory project.**

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[471] *See* OMB, Peer Review Bulletin, *supra* note 465, at 37-40.
[472] *See supra* note 463.
[473] *See* National Performance Review, *supra* note 461, at 59 (recommending flexibility in agencies ability to use a variety of different peer review methods for regulatory science).
[474] *See* Section IV.A.3., *supra*.

c. *Transparent records that apply Deliberative Process protections sparingly*

Both the Obama and Holdren memoranda direct agencies to make their underlying analyses and reasoning as transparent as possible, and this presumably includes an expectation that the agencies will share all stages of their work through comprehensive administrative records. As the President states: "If scientific and technological information is developed and used by the Federal Government, it should ordinarily be made available to the public."[475] As just discussed, because there is a range of interpretations of the scientific literature, alternative models, and often dozens of important judgments with regard to how to address remaining uncertainties, it is important for agencies to show their work to the greatest extent possible. Rulemaking records that are incomplete and neglect to show the agency's analytical process can obscure these important decisions. Indeed, if the decision-making processes studied here reveal anything – and this is exemplified most dramatically by the NAAQS process – it is that the series of documents and records that lead up to a final decision tell the story of the analysis. Recall that in both NAAQS and pesticide reviews, the pre-NPRM period involves multiple different analytical documents, notice and comment processes, and approximately four years of scientific discourse over the scientific information.[476] In such a decision process, the final decision document is simply the conclusion or ending. Without these earlier chapters, one is unlikely to be able to reconstruct the analysis that preceded it.

In meeting this goal of comprehensive administrative records, the agencies' practices were mixed. EPA's NAAQS process and NRC's informal rulemakings appear to involve the creation of relatively complete and open records, and at least the NRC indicated that it utilizes deliberative process privileges only in exceptional cases involving privacy or security.[477] The administrative records in the other programs appeared to involve a less consistently open approach towards deliberative process and record creation. Despite its command that all interagency written comments be included in the record,[478] for example, EPA's IRIS risk assessments still involve lengthy phone calls and meetings with other affected agencies that do not appear to be recorded in the public record.[479] Particularly given the early point in the process when these communications occur, this deliberative input may lead to changes in the framing of the basic scientific assessment that are never explicated and remain invisible. EPA's

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[475] Obama Memorandum, *supra* note 6, at 1; *see also* Holdren Memorandum, *supra* note 7, at 2 (directing agencies to ensure the "free flow of scientific and technological information" which includes "[o]pen communication among scientists . . . and the public").
[476] *See* Sections III.A.1.a. and b., *supra*.
[477] Statement of NRC Staff, Feb. 1, 2012.
[478] *See* Section III.A.1.c., *supra*.
[479] Interview with EPA Staff, National Center for Environmental Assessment, Feb. 3, 2012. It is not clear whether this decision to rely extensively on these deliberative discussions is a choice of OMB or EPA, although given the OMB's more vigorous application of the privilege to its communications, it seems more likely to be the former.

pesticide staff similarly concedes that phone calls originating from USDA to EPA are not included as part of the record.[480] The FWS also uses the deliberative process privilege to protect its record until the proposed rule is published, but even after that point one FWS staff member suggested that the FWS might still use the privilege in some cases to withhold some documents.[481]

Additionally, in the programs studied, the agencies' administrative records were not always compiled in ways that ensured that each important analytical step in the agency's decisionmaking was documented. FWS staff, for example, concedes that the record-compiling policies and practices at the Service are both dated and have become somewhat ad hoc.[482] As a result, each field office may create the record supporting a listing differently. One office might prepare the record diligently by compiling all drafts, carefully documenting the changes made at each step of the process and the reason for the change, and identifying substantive input between staff and management. In other offices the documents may be gathered late in the process, with the possibility that in this more haphazard creation of the administrative record, key documents will be missed, overlooked, or lost.[483]

An additional best practice principle for the agencies' integration of science into policy is thus to expect them to produce a comprehensive record that tracks their science-based decision-making for a given regulatory decision. This involves assembling draft reports, memoranda, and comments that document each significant step in the agency's analytical process. Providing this kind of open accounting of the agency's analytical process parallels a similar commitment to openness in science (i.e., that the underlying data should be made available) and indeed is even more critical in science-policy where there is more opportunity for hidden policy choices to influence an agency's analysis. Any gaps in this public documentation constitute weak links in the analytic chain and present the possibility that key decisions will be obscured from public view.

In the preparation of this comprehensive administrative record for science-intensive regulations, there should also be a strong presumption against deliberative process claims. To the extent that claiming deliberative process for the substance of interagency meetings is routine, for example, this tradition should be reversed and the privilege should be justified for each document before removing it from the public record. As Judge Patel recently reminded OMB in a case in which OMB asserted a similarly expansive deliberative process privilege claim: "It is the government's burden to set forth the exemption and justify withholding a document pursuant to that particular exemption. This is accomplished on a document by document basis by use of a 'Vaughn

[480] Interview with EPA Staff, Office of Pesticide Programs, August 5, 2011.
[481] Interview with FWS Staff Member, Field Office, Feb. 15, 2012.
[482] Interview with FWS Staff Member, Field Office, Feb. 15, 2012.
[483] *Id.*

index.'"[484] If instead OMB is allowed to claim deliberative process for all if its Presidential review duties, it "would effectively remove the OMB from the FOIA's reach. Without express statutory authority in this respect, this court is unwilling to provide the OMB with such a blanket waiver."[485]

To effectuate this best practice, agencies should develop written policies and regularized guidelines that instruct agency staff to place all important scientific and technical discussions on the record unless a very narrow set of circumstances is present that justifies an Executive Privilege.[486] Each significant analytical step, draft, and change in scientific interpretation and analysis should be included in this record. Every outside and interagency communication should be documented and described. Internal review comments should be made available, where possible. Again, while these complete record-keeping practices may not be necessary for all informal rules, this documentation is particularly important for science-intensive regulations.

Finally and ideally agencies should place their administrative records on the internet to permit easy public access. The FWS, as noted, does make its supporting record available at the time the proposed rule is published, but the record is apparently available only at one field office and is not available online.[487] In practice, then, public access to the FWS's administrative records supporting its listing and habitat designation decisions is limited. The other agencies studied generally posted their entire records and supporting documents on the web, either through regulations.gov or their own program's electronic library.

Agencies should resist applying deliberative process protections to documents and communications that influenced the development of science-based regulatory projects. To the extent agencies do invoke the deliberative process privilege, they should justify so doing with respect to each document that is withheld from the public. Draft science-policy analyses, such as draft papers, can be made public with the disclaimer that they do not necessarily

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[484] Center for Biological Diversity v. Office of Management & Budget, 546 F. Supp.2d 722, 729 (N.D. Cal. 2008) (emphasis added).

[485] *Id.*; *see also* NRDC v. U.S. DOD, 442 F.Supp.2 857, 861 (C.D. Cal. 2006) (requiring OMB and other agencies to provide "original justifications" for withholding documents under FOIA on a document-by-document basis).

[486] In 1980, the Administrative Conference recommended that advice an agency receives from other agencies or from the President and his/her advisers that pertains to matters of policy need not be placed in the public record, whereas advice related to factual matters should be memorialized therein. Administrative Conference Recommendation 80-6, *Intragovernmental Communications in Informal Rulemaking Proceedings*, 45 Fed. Reg. 86,407 (1980). The current report concludes that the distinction between fact-based and policy-based decisions is rarely clear in science-intensive rulemakings, *see* Section I, *supra,* and it therefore declines to use that distinction to determine whether agencies are justified in invoking the deliberative process privilege. Rather, it proposes that agencies assess each claim of deliberative process individually and invoke that privilege only in exceptional cases, such as those involving privacy or security.

[487] *See* Section III.A.2., *supra*.

represent the policy or scientific position of the agency. Agencies should prepare an administrative record that advances this transparency goal by ensuring that the documents, meetings, and other deliberations that resulted in potentially significant changes to scientific assumptions or interpretations are made part of the administrative record. These administrative records should be posted on the internet when possible.

3. Agency Innovations that may develop into Best Practices with Experience

A number of other process innovations were also discovered in the course of the study for how agencies might use science in their regulatory decisions. These innovations are not presented as "best practices" in the report since there is far too much variation among agencies and it is not clear whether these innovations are feasible or even advisable beyond the particular regulatory programs in which they were first discovered. Yet the innovations do provide ideas that agencies may wish to consider in evaluating and reforming their own programs. The innovations may also seed other ideas and approaches that prove even more effective and resilient in the integration of science for policy. Thus the innovations should be considered carefully by agencies in the development of their own programs, but they are not established enough to constitute best practices.

a. Four Analytical Steps that Enhance the Transparency of the Agency's Policy Choices

One of the core problems in science-policy is the difficulty of identifying how the agency's policy decision has been informed by a robust assessment of the best available scientific evidence.[488] Administrators can claim that "the science made me do it" when the opposite is in fact the case. Moreover, in some cases agencies have failed to develop robust scientific records to support decisions, and in rarer cases those records have been skillfully manipulated in ways that are invisible to non-experts and in some cases even to expert reviewers. The literature is filled with examples of this lack of transparency of the respective roles of science and policy in the agency's regulatory work.[489]

The antidote to these problems is for the agency to identify and explain its various assumptions, judgments, and other choices clearly and accessibly. Even though science and policy are often imperceptibly mixed in how the agency develops a science-based rule, an elaborated analytical process can expose these often important and/or contestable

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[488] *See* Section I, *supra* (discussing this problem).

[489] *See, e.g.*, Doremus, *supra* note 5; Holly Doremus, *Scientific and Political Integrity in Environmental Policy*, 86 TEXAS LAW REVIEW 1601 (2008); Peter L. Strauss, *Possible Controls over the Bending of Regulatory Science, in Anthony, et. al eds.,* VALUES IN GLOBAL ADMINISTRATIVE LAW 126-27 (2011); Wendy Wagner, *The Science Charade in Toxic Risk Regulation*, 95 COLUMBIA L. REV. 1613 (1995); *see also* OIG MacDonald Report, *supra* note 11.

decisions at each step in the analysis for more vigorous internal and external scrutiny. While none of the analytical steps involve just "science" or just "policy", by explaining the choices at each step of its process – how the agency articulated the problem; evaluated the literature; applied the literature to the problem at hand with models, etc; and identified the range of options – the messy merging of science and policy will be considerably more transparent and accessible. Indeed, this is precisely what is required by the President's scientific integrity memorandum.[490]

While the NAAQS process may not have the ultimate solution to this implementation challenge of unpacking the inextricable science-policy weaving through an agency's decision, the NAAQS process appears to have the best answer presently available within agency decision-making.[491] Key features of the NAAQS process that help draw out the relationship between policy and the underlying scientific information are: 1) the initial articulation of specific policy questions arising in a regulatory project that might be informed by science; 2) an assessment of the available evidence bearing on these questions; 3) application of the evidence to the policy questions at issue, with robust statements of all material uncertainties and assumptions; and 4) a report that identifies the various plausible policy alternatives based on the scientific record that is accessible to policymakers.

These sequential analysis steps are repeated in other areas of health policy. The strongest parallel occurs in clinical medicine, in which health care providers synthesize limited health research, some of which may be affected by significant conflicts of interest.[492] Like the NAAQS process, clinical researchers first identify specific policy questions to be resolved by the evidence.[493] Clinical researchers then assemble the full research bearing on the question and weight it according to basic principles established in advance based on various quality and relevance related factors.[494] For example, one a priori principle common in literature syntheses in clinical medicine downgrades or even

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[490] The Holdren Memorandum requires agencies to "communicate scientific and technological findings by including a clear explication of underlying [significant] assumptions; accurate contextualization of [significant] uncertainties; and a description of the probabilities associated with both optimistic and pessimistic projections, including best-case and worst-case scenarios where appropriate." Holdren Memorandum, *supra* note 7, at 2; *see also* Obama Memorandum, *supra* note 6, at 1 (directing agencies to "make available to the public the scientific or technological findings or conclusions considered or relied on in policy decisions.").

[491] *See* Section III.A.1.a, *supra*.

[492] *See, e.g.*, DANIEL M. FOX, THE CONVERGENCE OF SCIENCE AND GOVERNANCE 84 (2010) (noting conflicts of interest problems in clinical medicine); Tracey J. Woodruff & Patrice Sutton, *Pulling Back the Curtain: Improving Reviews in Environmental Health*, 118 ENVTL. HEALTH PERSPECTIVES 326 (2010) (discussing the pervasive conflicts of financial interests in clinical medicine and the need for principles for rating that evidence as part of the analysis in advance).

[493] *See* Tracey J. Woodruff, Patrice Sutton & The Navigation Guide Work Group, *An Evidence-Based Medicine Methodology To Bridge the Gap Between Clinical and Environmental Health Sciences*, 30 HEALTH AFFAIRS 931, 934-35 (2011) (setting out almost identical analytical steps for clinical medicine).

[494] For a discussion of these advanced principles, see FOX, *supra* note 492, at 88-89; Woodruff, et al., *supra* note 493, Appendix at 5-8.

excludes research produced with a financial conflict of interest. Conversely, another common a priori principle upgrades research when the magnitude of the effect on the test subjects is large or serious.[495]

National Academies of Science reports, as well as a recent consensus report from the Keystone Center, further reinforce the wisdom of this sequential, methods-based approach to synthesizing diverse evidence in a systematic way. In Science and Judgment, for example, the Committee emphasizes the importance of these same steps, beginning with a clear statement of the problem and data needs,[496] establishing a clear statement of default rules and other a priori principles in advance,[497] and providing a rigorous comparison of alternative models.[498] The Keystone Center report similarly underscores – even more explicitly -- the importance of conducting a systematic review of the literature in framing the science-policy decision-making effort. The Keystone Center report also catalogues the steps entailed in this systematic review that parallel the first three steps of the NAAQS process.[499]

Clearly each of these steps cannot be done in an elaborate way for every science-intensive regulatory project, but most of these steps are already implicit in agency analyses. Thus, even if these discrete steps are collapsed into a single document, they will nevertheless offer an analytically useful way to begin to identify overarching policy questions and the important role that science plays in resolving them.

1. *Policy Questions.* Agencies should first identify the policy questions that can be informed by the scientific evidence. The NAAQS process dedicates an entire report to this stage of the process,[500] yet for most rules that must be promulgated on a tight timeframe and small budget, articulating the science-policy questions could be done with relatively little effort in an initial paragraph of an agency's report.[501] Both the BiPartisan Policy Center and Keystone Center reports also underscore the importance of identifying the basic questions that will be addressed with scientific research as a first step in the integration of science.[502] Ideally, agencies will also include these key

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[495] *Id.*, Appendix at 6-7.
[496] NRC, SCIENCE AND JUDGMENT, *supra* note 1, at 144.
[497] *Id.* at 254-55.
[498] *Id.* at 186-87. *See also id.* at 257-58 (emphasizing the need for structured steps in an assessment and providing a series of steps that roughly parallel the NAAQS steps).
[499] *See* Keystone Center, "Improving the Use of Science in Regulatory Decision-Making: Dealing with Conflict of Interest and Bias in Scientific Advisory Panels, and Improving Systematic Scientific Reviews" 18-25 (September 18, 2012), http://www.keystone.org/images/keystone-center/spp-documents/Health/Research%20Integrity%20Rountable%20Report.pdf.
[500] *Id.*
[501] The FIFRA process, albeit inconsistently, also involves a planning stage that identifies the policy-relevant questions. Although they are presented in only a few paragraphs, these more focused questions nevertheless go a long way to help frame the resulting scientific analysis. *See* Section III.A.1.b., *supra*.
[502] *See* Keystone Center, *supra* note 499, at 20.

questions in their requests soliciting relevant information from the general public, a request that was made in every regulatory program under study.

2. *Assessment of the Evidence.* Agencies should then identify and evaluate the existing scientific evidence – mostly the literature – that bears on these policy questions.
   a) The first sub-step involves establishing the equivalent of a study design for the literature review, which includes identifying principles in advance for how different types of studies will be weighted.[503] The Keystone Center report recommends, for example, that "[c]riteria established for relevance and credibility [and perhaps also for other features] should be developed and made public before the selection of studies to be included."[504] All studies should not be weighted equally but assessed against these ex ante criteria.[505] Research produced under conflicts, for example, may deserve less weight than research produced independent of the sponsor's influence.[506] Beyond conflicts, however, a number of ex ante principles could be established, such as how to address gaps in research, whether to upgrade studies if they reveal significant risks, the development of stopping rules, etc.[507]
   b) The second substep then involves summarizing and interpreting the literature within this study design. This literature assessment lays the groundwork for the agency's next step – its choice and application of models and other assessment tools to inform the policy questions, often in a more focused and quantitative way. Since an evaluation of the literature is implicit in science-intensive regulatory work, separating out this phase will not only be a natural step in most cases, but will make the resulting analysis more transparent.[508]
3. *Application of the Evidence.* Agencies should then identify and justify their choice of models and other analytical tools (in some programs this is done generically at a program-wide level)[509] and then apply these application tools to the scientific evidence described in step 2. An application of the model(s) to the evidence should highlight the policy-relevant choices involved in

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[503] Lynn Goldman statement in NAS, Improving the Use of Science in the Administrative Process Transcript, Sept. 10, 2012, at 44-46; Tracey Woodruff statement in *id.* at 141-42.
[504] Keystone Center, *supra* note 499, at 20; Bipartisan Policy Center, supra note 2, at 15-16.
[505] *Id.* at 20 and 22.
[506] *See supra* note 492 and *infra* Section IV.C.
[507] *See, e.g.*, Keystone Center, *supra* note 499, at 22-24 (providing examples and elaboration on the criteria to guide the relevance and the credibility assessments. See also Comments of Dr. Lynn Goldman, NAS Meeting, Transcript, *supra* note 503, at 44-45; Woodruff, NAS Meeting, Transcript, *id.*, at 141-42; see also NRC, SCIENCE AND JUDGMENT, *supra* note 1, at 156 (providing examples of how these a priori principles might work in data prioritization and synthesis).
[508] Interview with EPA Staff, National Center for Environmental Assessment, Jan. 18, 2012; Interview with FWS Staff Member, Field Office, Feb. 15, 2012.
[509] *See* Section III.A.1.b., *supra* (describing this feature of FIFRA risk assessment models, which are reviewed by EPA's SAP).

selecting among plausible models or using multiple models, many of which will be the same as the a priori principles established in the design for the literature synthesis.[510] This application of the evidence to the policy question should also identify significant uncertainties that result from using these models, assessments, etc. EPA's NAAQS report again is considered to be particularly good at providing this kind of explication.[511]

4. *Bridge the Evidence to the Policy Questions.* The agency should then explain in ways that nonscientists can understand how this scientific analysis informs the core policy questions. This discussion should identify the significant choices that need to be resolved by policy considerations, as well as the range of plausible choices, before recommending a preferred course.[512]

In most cases, the agencies under study generally did not disaggregate their analyses into these separate steps. For example, only in the case of NAAQS and to a lesser extent in FIFRA is an evaluation of the evidence and an assessment of the evidence separated in the agency's decision-making.[513] The FIFRA and NAAQS programs are also the only programs that consistently articulate specific policy questions that serve to focus the resulting scientific analysis.[514] Finally, only the NAAQS process provided a frank discussion of how the scientific information informs the pressing policy questions, at least in a way that is accessible to nonscientists.

Since each of these analytical steps is necessarily implicit in much of the work the agencies do, the recommendation below encourages the agencies to make these analytical steps explicit, particularly the initial steps since they should be easy to separate out for most agency analyses. The fourth step is arguably the most important, but it will likely require more agency resources since it involves an additional discussion that attempts to bridge policy and science. It also requires the agency to communicate this analysis to nonscientists, which is not a simple matter. In the meantime, the agencies are encouraged to study the NAAQS policy assessments, models from clinical medicine, and the more elaborate suggestions in the Keystone Center report for ideas on how this recommendation for a more regularized analytical process might be accomplished within their unique programs.[515]

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[510] Goldman, NAS Meeting, Transcript, *supra* note 503, at 45.
[511] *See* NAS FORMALDEHYDE REPORT, *supra* note 1, at chapter 7.
[512] In EPA's policy assessment, the staff explains the different scientifically plausible options available to the decision-maker and outlines the details of the scientific support (pro and con) for each option. CASAC is intimately involved in reviewing this science-policy synthesis to ensure that it is accurate in its representations of the underlying scientific assessments. *See* Section III.A.1.a., *supra*.
[513] See Sections III.A.1.a. and b., *supra*.
[514] *Id.*
[515] *See* Section III.A.1.a., *supra* (discussing these policy assessments and giving links to some recent policy assessments).

All significant science-policy choices made by an agency in reaching a decision should be identified and explained in clear and understandable terms. In order to provide this heightened level of transparency, agencies should consider following an analytical process that: a) identifies the policy-relevant questions that can be informed by science; b) identifies in advance a study design, such as criteria for weighting individual studies, as well as identifying other a priori analytical choices, like stopping rules; c) provides a synthesis of the available evidence and relevant literature guided by this study design; and d) identify other significant assumptions, choices of analytical techniques, and remaining uncertainties and how different plausible choices might change the resulting policy decision. If possible, the agency should also follow the model of the NAAQS policy assessment in bridging science and policy in a final report, although this final step will likely involve more effort and experimentation.

Making these analytical steps explicit may not be practicable in some science-policy decisions and may not be practicable in other regulatory settings. This recommendation simply encourages agencies to consider this staged approach in their processes. Ultimately, with experience, this analytical approach may develop into a best practice. Until then, agencies are strongly encouraged to consider this analytical approach in conducting their work.

b. Stopping Rules are Useful to Clarify the Point at which a Scientific Record and Debate are Closed

The notion that a scientific record is closed on new science or debate is antithetical to the scientific process, yet in policy settings this closure is essential if decisions are to be reached. In this study, these points of closure are loosely referred to as "stopping rules."[516] In the case of regulatory science, stopping rules are not based on science but instead are based on the agency's available resources, time and other policy considerations. A "stopping rule" does not put an end to research or to the accumulation of new information by regulators; it merely sets the point at which a policy decision will be reached in the interim. The resulting regulatory decision will be revisited with new evidence at some future date, often established in the stopping rule itself.

The need for "stopping rules" in regulatory policy arises in at least two different contexts. First, the agency must develop an explicit point at which it closes its consideration of new evidence. Without this type of stopping rule, each new study or discovery that arises in the course of the regulatory process could arguably throw the

[516] The concept of stopping rules were introduced into the social studies of science literature by Sheila Jasanoff. *See supra* notes 45-46 and accompanying text for a discussion of stopping rules.

project back to the starting point, requiring the agency to conduct a re-analysis, reopen the comment period, etc. Second, the agency may occasionally find it necessary to close debate, even when important scientific issues have not been resolved. In this second setting, it is unresolvable disagreements between experts rather than the emergence of new evidence that prevents closure on an issue. Rather than suspending the regulatory project in the hope that the experts will reach some agreement, a decision that the agency must proceed despite these disagreements – the equivalent of a stopping rule – may be necessary to move the project forward.

Stopping rules are not only important to ensure that the agency stays on track to produce final decisions for science-intensive regulatory programs, but these rules are important to enhance the transparency of the decision-making process. Explicit stopping rules provide all participants, as well as agency staff, with clear policy direction on when scientific disagreements have come to a close. Without clear stopping rules, points of debate and new studies can even be used manipulatively, as well as in good faith, to throw the science-policy decision-making off course or run it through repeat circles of analysis and peer review, without any credible way of cutting off these iterative analyses and discussions.

With respect to emerging science, several agency programs – particularly the NAAQS and FWS's listing programs – have built-in stopping rules; both agencies face strict statutory deadlines that can and have been enforced by stakeholders in court.[517] Even in programs that lack these statutorily set stopping rules, some agencies have developed accommodations to meet the challenges posed by emerging science. In the NAAQS program, EPA has reinforced its statutory deadline with an agency policy that once the integrated science assessment (EPA's analysis of the existing literature) has been peer reviewed, new science will not be considered until the next five year revision of a standard.[518] In IRIS assessments, EPA also attempts to limit itself to the scientific record created at the time a risk assessment is peer reviewed, although this appears to be a more informal convention.[519] In pesticide registration reviews, by contrast, new science is considered up to the point of the proposed decision.[520] The pesticide registration review process is new enough that there is not a lot of experience to determine whether

[517] *See* Sections III.A.1.a. and 2., *supra*. For example, the one year deadline for a decision under the ESA is so abbreviated that little new science or methodological breakthroughs are likely to emerge in the interim.
[518] Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012. In some cases the agency may conduct a provisional scientific assessment near the end of the NAAQS review process that considers whether the new science would have materially changed its decision. EPA staff reports that these provisional science reports have never led to a finding that the new science would cause a material change in the standard. They credit this fact largely to the enormous scientific record that exists at the time of standard-setting and the resultant unlikelihood (but not impossibility) that a new study in fact will support a material change in the standard. Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012.
[519] Interview with EPA Staff, National Center for Environmental Assessment, Jan. 18, 2012.
[520] Interview with EPA Staff, Office of Pesticide Programs, Jan. 27, 2012;

earlier stopping rules are needed and whether this more open-ended approach could create the possibility of extended delays.[521] A best practice would suggest that agencies establish their stopping rules for emerging science ex ante – for example determining that evidence arising after a critical analysis point will not be considered.

Setting stopping rules for when debate is closed is a much more difficult task for programs that do not involve rigid statutory deadlines. Critical comments by peer reviewers and the public can identify multiple differences with the agencies' technical analysis. Each revision of the draft in response to comments may shrink the contested issues in need of elaboration or development, but the revisions can also open up new issues for yet another round of critical scrutiny and debate.[522] As a result, there is no clear point for when the rule is effectively good enough, and there is also no clear point for when an agency's response to a set of criticisms can be considered complete, particularly for heated scientific disagreements.[523]

Not surprisingly, most agency programs lack clear stopping rules that allow them to put an end to ongoing scientific debate, and this resulting ambiguity creates problems for the agencies. Without clear stopping rules, it is difficult for stakeholders to distinguish those situations in which the agency's decision to close debate is based on science or instead on practical realities. The lack of transparency in an agency's stopping rules may also explain some of the most vigorous criticisms of the quality and transparency of the agencies' science. For example, stakeholders from both the industry and public interest community interviewed for the study considered the most significant transparency problem in EPA's pesticide program to be the agency's insufficient and unjustified dismissal of some of their comments.[524] Yet this could easily be the result of confusion over the basis (stopping rules vs. science) for EPA's decision to close debate as it moves towards a decision. In IRIS, voluminous peer review comments from external reviewers, combined with a high level of intense stakeholder criticism, including from sister agencies, appear to contribute substantially both to the agency's excessive delays in preparing IRIS assessments and to the unwieldy nature of the resultant assessments that endeavor to respond to these numerous comments.[525] Again, part of the problem may be the lack of explicit stopping rules to end debate. Indeed, in IRIS it is possible that the EPA may not have the final say on setting stopping rules; instead closure is determined by OMB through intergovernmental arrangements that are not in the public domain.[526]

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[521] *Id.*
[522] *See also* Sheila Jasanoff, *Research Subpoenas and the Sociology of Knowledge*, 59 Law & Contemp. Probs. 95, 99-100 (Summer 1996) (discussing the "infinite regress" problem; basic methodological features of research are established on consensus but are susceptible to unraveling when under fierce attack).
[523] *Id.*
[524] *See* Section III.A.1.b, *supra*.
[525] Interview with EPA Staff, National Center for Environmental Assessment, Feb. 3, 2012.
[526] One of the major sources of frustration by EPA during OMB review is that OMB's "stopping rule" is an effective requirement that the agency make all of the requested corrections; until that point, the rule is not cleared for publication. One EPA staff relayed that "[b]oth OMB's minor and major comments are viewed

In an effort to significantly increase the transparency and productivity of their regulatory work, agencies should endeavor to establish clear stopping rules for technically complicated regulatory decisions at the beginning of the regulatory project that guides it. This exercise is particularly when the agency operates without judicially enforceable statutory deadlines.[527] While agencies may deviate from these ex ante goals as the regulatory process unfolds, they will be expected to explain their deviations as against this initial goal.

With some explication of stopping rules, agencies should thus be clear in their decision-making when they are closing debate simply because there is no clear resolution (e.g., setting a stopping rule on ongoing debate) versus when the agency instead believes there is a best scientific answer to a particular contested issue. This distinction will provide enhanced transparency on whether the agency is deciding based on policy or instead believes that as a scientific matter extended debate is not warranted.

In the NAAQS reviews, EPA has again been a pioneer in developing a different and potentially easier way to develop credible stopping rules for closing debate over unresolved scientific issues. Specifically, EPA relies on its science advisory board, CASAC, to effectively declare "closure" when it considers the EPA's responses to criticisms adequate.[528] This respected opinion of CASAC effectively puts a stop to disagreements and overrides criticisms and comments filed by stakeholders and the general public. Interestingly, moreover, while there were discussions of limiting CASAC's power to declare "closure" during the reform of the NAAQS process,[529] it appears that the CASAC's closure role continues today.[530] EPA may have realized that it is in the agency's best interest to have an independent and trusted scientific arbitrator determine when the agency's response to criticisms and comments is sufficient.

In particularly controversial science-based projects, agencies should thus consider convening expert panels to assist them in setting stopping rules. Indeed, in weighing the advantages of external peer review, this attribute should be factored in as a benefit. External peer review likely works to facilitate closure only when the reviewers are

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as equal; all the changes need to be made." Interview with EPA Staff, National Center for Environmental Assessment, Jan. 18, 2012. *See also* GAO, Chemical Assessments, *supra* note 152, at Appendix III (identifying the important role that OMB has played in some IRIS assessments).

[527] Agencies are likely not to voluntarily promulgate binding rules that set reasonable deadlines for their projects and thus simulate statutory deadlines, but if they did set judicially enforceable deadlines on their regulatory projects through regulation this would also address the stopping rule challenge for agencies that lack statutorily required deadlines.

[528] *See* Section III.A.1.a., *supra*.

[529] This was based on a concern that this type of authority provided CASAC too much power and further delayed the proceedings, over time. Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012.

[530] Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012. See Section III.A.1.a., *supra*.

convened as a panel, rather than individually, however. In the IRIS process, for example, the use of individual external peer review provides valuable scientific feedback, but because the reviewers don't confer, these individual peer review comments are as likely to expand the issues at play as narrow them. It is not unusual for individual reviewers to place emphasis on different issues or even conflict in their comments, for example.[531] In cases when advisory bodies are used, moreover, this external scientific review role should extend until the public comment period ends to ensure that the panel's deliberations consider the issues raised by stakeholders and facilitate closure. The importance and value of external peer review advisory boards with respect to stopping rules again reinforces one of the previous recommendations regarding eliminating unnecessary barriers to the agency's use of FACA for purposes of soliciting external peer review.

Like the right to dissent and the importance of authorship, the concept of stopping rules is new enough that agencies should be urged to set these rules, but they do not yet rise to the level of a best practice. Over time, the use of stopping rules may be capable of being routinized across agencies and regulatory missions, but we are not at that point yet.

In regulatory settings, particularly in cases when agencies are not bound by judicially enforceable deadlines, the agencies should be encouraged to establish explicit stopping rules on regulatory projects, both with regard to when they will close their consideration of emerging research and when they will close otherwise unresolvable scientific debate in order to reach a decision. External peer review bodies may be particularly useful to agencies in establishing scientifically credible points at which debate should cease.

c. *Checkpoints that Identify Future Research Needs*

Working in tandem with "stopping rules" are research "checkpoints," which consist of a list of specific research projects that should be conducted in the near term to advance regulatory understanding on a particular issue.[532] The NAAQS Policy Assessment, for example, provides this type of explication of future research questions in need of study.[533] These checkpoints would ideally be identified by an agency when the record closes (as set by the stopping rules). Without adding this explicit "research checkpoint," there is a risk that the most important gaps in regulatory understanding will be lost or forgotten after the rule is promulgated and the agency turns to other issues and problems.

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[531] Interview with EPA Staff, National Center for Environmental Assessment, Feb. 3, 2012. *See also* Section III.A.1.b., *supra*.
[532] Dr. Louis coined this term, See NAS Meeting Transcript, *supra* note 503, at 148-49, but as it developed through discussions, the idea of checkpoints became primarily focused on future research needs.
[533] *See supra* note 71and accompanying text.

For science-intensive rules, an agency should identify specific types of future research projects that will advance understanding on the regulatory issue. This identification of research questions and priorities should influence the agency's research agenda as well as provide a benchmark for measuring regulatory progress. While agencies may need to experiment with when and how they incorporate "research checkpoints" into their regulatory analysis, the most fruitful time may occur at the point the record is closed, as determined by stopping rules.

d. Staff Authorship or at least Attribution is important for Agency Analyses

Agency managers should consider and, where possible, capitalize on the scientific and organizational benefits of affording authorship credits or at least attribution to staff scientists, particularly for assessments of the relevant scientific literature that precede rule proposals. Providing authorship or at least attribution to the agency staff who prepare a technical analysis provides a means of accountability and well-deserved credit to government scientists.[534] Identification of the authors of an analysis also helps provide information regarding potential conflicts or biases of the scientists; identifies their disciplinary affiliations; and permits others to assess the extent to which the authors are both expert in the subject matter and retain some distance from having a personal or professional interest in the outcome of the analysis.[535] In some regulatory settings, these authorship credits are not beneficial to the agency's work or to the staff careers. For this reason, managers should seriously consider providing some form of authorship credit, but are not expected to justify when authorship proves undesirable or impracticable.

Authorship provides important benefits to regulatory science. In interviews, several management-level scientists at EPA confirmed the important role of authorship in their programs, particularly with respect to providing credit to talented agency staff.[536] Authorship also serves to afford agency staff a stake in the final product, thus sharpening

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[534] Within science, authorship is fundamental to ensuring transparency, integrity, and accountability. Journals place significant weight on this authorship. *See supra* note 32 and accompanying text (discussing the critical role of authorship in science). While the development of scientific analyses used for regulation is different and may even include nonscientists on the analytical team, the underlying value of some basic authorship and attribution is essentially the same. Moreover, as discussed in the text, this basic credit is not only owed to the staff preparing the analysis but helps retain talented scientists in government. Both of these values are critically important in the President's scientific integrity initiative. *See* Holdren Memorandum, *supra* note 7, at 3 (principle IV noting that "[a]gencies should establish policies that promote and facilitate, as permitted by law, the professional development of Government scientists and engineers"); *see also* Obama Memorandum, *supra* note 6, at 1 (directing agencies to develop retention policies that attract talented scientists).

[535] *Id.*

[536] Interview with EPA Staff, National Center for Environmental Assessment, Jan. 18, 2012; Interview with EPA Staff, National Center for Environmental Assessment, Feb. 3, 2012; Interview with EPA Staff, Office of Pesticide Programs, August 5, 2011

debate, internal scrutiny, and the quality of the final product within the agency.[537] At the same time, these agency managers cautioned that since the reports were co-authored by interdisciplinary teams and subject to multiple levels of peer review and intra-agency review, the staff did not have the power to unilaterally veto revisions (much as an individual NAS or SAB panel member cannot control the content of each feature of the report).[538] Nor were individual authors within EPA actively encouraged to dissent or withdraw as authors when they did not agree with every feature of the resulting analysis.[539] Instead, authorship in these teams is consensual and parallels the approach to authorship taken by science advisory boards or NAS panels where authors are encouraged to agree, but remain free to dissent. Like a consensus report, the agency authors are intimately involved in producing the product; they agree in general terms with the substance of the report; and by contributing their name to the report they signal that they are comfortable with the process for producing the report and its general content.[540] In the unusual case where this consensus cannot be reached, however, agency staff can be removed from the acknowledgements or accreditations or can be changed from authors to contributors.[541] They can also, at least informally (see below), prepare a dissent for the report and the public record.[542]

To the extent that management – either political, career, or both – are involved in authorship or in the review of the report and afforded an opportunity to make changes, this fact should be noted in the document as well. Under this approach, technical reports would contain indicia of authorship, a list of reviewers and their roles, and would thus provide full disclosure of the role of all contributors, much as a disclosure of conflicts and sponsorship provides in published articles in scientific journals. This disclosure of authorship is a standard prerequisite for publication in most scientific journals;[543] in the abstract, then, it seems like an appropriate expectation for scientific analyses conducted by agencies.

In contrast to the EPA, at the FWS and NRC, there is no similar form of authorship or even meaningful attribution for scientific staff, and there is no reason to believe that these agencies are especially unique with regard to this issue. In the case of the FWS, one agency official suggested that there is generally insufficient time or

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[537] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Feb. 3, 2012; Interview with EPA Staff, Office of Pesticide Programs, August 5, 2011; Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Jan. 18, 2012; Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012.
[538] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Feb. 3, 2012
[539] *Id.*
[540] *Id.*
[541] *Id.*
[542] Interview with EPA Staff, Office of Pesticide Programs, August 5, 2011.
[543] *See, e.g.*, Authorship Standards for ICJME (biomedical journals), at http://www.icmje.org/ethical_1author.html

resources to ensure that the staff reports are adequately reviewed, and thus the reports remain "works in progress" as they move through collaborative intra-agency review processes where they are constantly revised.[544] Making these reports public, agency officials suggest, could increase the resource and time drain on the agency and also place staff biologists in the bulls-eye for political attack and even interference.[545] At NRC, the justifications are less clear but could arise from a concern that authorship and attribution may actually increase incidents of retaliation and chill rigorous staff analysis; a management authored analysis protects staff in this way. More research is warranted on the agencies' reasons for not crediting staff with the scientific analyses, at least in an acknowledgements section. For that reason, authorship and attribution is presented in this report as an innovation that deserves consideration by agencies but does not rise to the level of a standard, best practice at this point in its development.

As an important and related point, the programs under study provide at least preliminary support for the observation that staff-authored analyses tend to be more evidence-focused, nuanced, and likely to concede limitations, gaps, and assumptions in the available evidence as compared to analyses that are heavily influenced, if not written by managers.[546] In at least one very well-documented occasion in EPA's NAAQS program, the staff-authored policy assessment provided a much more complete and sophisticated discussion of the relevant scientific literature as compared with the more superficial, incomplete, and arguably ends-oriented, parallel analysis prepared by political management.[547] Both EPA's Office of Research and Development and the CASAC noted the significant differences between the staff versus the management authored reports with regard to the robustness, quality, and transparency of the science-based analysis.[548] Though it is merely one example, this experience suggests that science-

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[544] Interview with FWS Staff, Endangered Species Program, Jan. 9, 2012.
[545] Id.; Interview with FWS Staff Member, Field Office, Feb. 15, 2012. In the abstract, concerns about resources could be addressed simply by ensuring that draft reports, when made public, are accompanied by internal review comments and marked as a draft. Alternatively, staff-authored drafts could be accompanied by a disclaimer – as they are for draft NAAQS reports – that the staff's analysis is a draft and does not necessarily represent the views of the agency, even after it has been internally peer reviewed by other agency staff. *See* Section III.A.1.a., *supra* (discussing how the NAAQS analyses contain this disclaimer).
[546] At NRC and the FWS, the agencies produce more collaborative science-policy analyses that may originate with staff but are heavily layered with supervisors and manager comments such that the final draft scientific assessment effectively has no clear author but is a product of the agency program working together. There is apparently ongoing discussion in at least the FWS that a listing analysis might also benefit from greater development at the staff level, before extensive review occurs from management. Interview with FWS Staff Member, Field Office, Feb. 15, 2012. In this case the concerns are less about conflicts of interest emerging from the reviewing managers and arise more with respect to the fact that the time allotted for conducting the actual analysis is cut short by the great amount time allotted for multiple reviews by supervisors, all of which must be completed within a year. Yet placing more responsibility on staff might have additional benefits in this situation – such as accountability and providing scientific credit -- that make it even more worthwhile for the FWS to consider processes that place greater emphasis on staff-authored analyses, even if they consist of only the initial literature review.
[547] *See* Section III.A.1.a. (discussing this example in more detail).
[548] *Id.*

integration may benefit from a two-step process that begins with a staff-authored scientific assessment followed by a management-drafted decision based on the evidence.[549]

To the extent possible, agency analyses should track the principles and norms of science and scientific and technical assessments conducted by the agency should confer consensus-type authorship rights on the staff who prepares them. At the same time, the agency should identify as authors all of those who contributed in a significant way to a scientific report, including staff attorneys and economists if they in fact contributed to the final product. Although the concept of explicit authorship and acknowledgement is still too preliminary to rise to the level of a best practice, it is an innovation that is grounded in the norms of science and should be carefully considered by all of the agencies engaged in science-intensive regulation.

> **Agency staff plays an important role in producing the agency's analyses. When practicable and appropriate, agency managers should consider providing staff with some form of consensual authorship right or attribution for reports or analyses to which they contribute in a significant way. All staff authors who contributed in a significant way to a technical or scientific report should be acknowledged, including economists, lawyers, and other nonscientists. In a similar vein, reviewers and other contributors should also be identified by name and general contribution.**

e. The Right to Dissent

Agencies should also develop policies to ensure that they encourage vigorous and diverse debate among agency scientists.[550] This goal of promoting both vigorous and diverse debate is made difficult by the realities of government service (e.g., shared mission and long tenure). Open debate may also be discouraged to the extent there are perceptions by staff that management wants a particular finding and will continue to request information until they "get the answer they are looking for."[551] Yet scientific integrity requires not only protecting skeptics within the agency's scientific staff, but nurturing an environment of robust and open debate and vigorous scrutiny of agency work products.[552]

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[549] *Id.*; Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012.
[550] *See, e.g.*, Obama Memorandum, *supra* note 6, at 1 (directing that the agencies ensure "the highest level of integrity in all aspects of the executive branch's involvement with scientific and technological processes"); Holdren Memorandum, *supra* note 7, at 1 (principle I.1. directing agencies to develop policies that "[e]nsure a culture of scientific integrity. Scientific progress depends upon honest investigation, open discussion, refined understanding, and a firm commitment to evidence.").
[551] *Cf.* Patricia M. Wald, *Analysts and Policymakers: A Confusion of Roles?*, 17 STANFORD LAW & POLICY REVIEW 241 (2006) (describing this problem in the security arena).
[552] *See supra* notes 29 and accompanying text (underscoring the central role that vigorous scrutiny by diverse peers plays in science).

The NRC's open and collaborative workplace policy offers the most comprehensive approach to address this challenge.[553] This program includes the open door policy, non-concurrence process, and differing professionals program. While these programs have not been given the resources that some might wish or that they necessarily deserve, they are now well-established within the agency. Through these programs, employees are encouraged to question and voice objections and are, as mentioned, given formal avenues to pursue their disagreements and are sometimes even awarded for doing so.[554] Whether these written, formal policies are internalized within the NRC, however, is difficult to determine. Some staff still report they fear retaliation for disagreeing with superiors.[555] On the other hand, surveys of job satisfaction at the NRC are generally quite high.[556]

Both FWS and EPA interviewees stated that in practice they utilize an approach that parallels these formal processes in the NRC for permitting and even encouraging dissent and internal debate. Specifically, both agencies report that it is traditionally accepted that staff can file public memoranda dissenting on scientific findings.[557] There was at least one example of this practice in the FWS and in the EPA pesticide program.[558] The EPA and FWS also purport to nurture diverse, open, robust debate among scientists.[559] The FWS in particular suggests that this open and vigorous give-and-take between management and staff defines the scientific culture of the Service.[560] Moreover, the geographic dispersion of FWS's scientists across more than 50 staff and regional offices creates a spatial distance among the employees, particularly in relation to headquarters, which in the case of the FWS only seems to further ensure the diversity of views and the perception of a level playing field with headquarters in terms of scientific expertise and knowledge.[561]

The informal policies in the FWS and EPA do not appear to be documented, however, and may not be well known by employees. Given the informality of these dissent policies, moreover, it seems doubtful that employees will feel they can be assured

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[553] *See* Section III.B.2., *supra*.
[554] *See id.*
[555] *See id.*
[556] *See* NRC News, "NRC Receives Top Rankings from Annual Survey," Sept. 22, 2011, available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDUQFjAB&url=http%3A%2F%2Fpbadupws.nrc.gov%2Fdocs%2FML1126%2FML11265A309.pdf&ei=8lInT-uJG8PO2wXZzoXmAg&usg=AFQjCNFvL50u5xPjLXdopYqMhYwMc16WEw&sig2=JGIpo7HZhdEmEJuEdH3BEA (reporting on this high job satisfaction report).
[557] Interview with FWS Staff, Endangered Species Program, Jan. 26, 2012; Interview with EPA Staff, Office of Pesticide Programs, August 5, 2011.
[558] *Id.*
[559] Interview with FWS Staff, Endangered Species Program, Jan. 9, 2012; Interview with FWS Staff, Endangered Species Program, Jan. 26, 2012; Interview with EPA Staff, Office of Pesticide Programs, August 5, 2011.
[560] Interview with FWS Staff, Endangered Species Program, Jan. 9, 2012; *see also* Hall memo, *supra* note 204.
[561] Interview with FWS Staff, Endangered Species Program, Jan. 26, 2012.

that supervisors will not retaliate against them in some settings when they chose to dissent. It is also not clear whether an employee's dissent will always be placed in the public record, since supervisors could determine that these statements should be withheld as deliberative process. Additionally, incomplete guidelines and oversight with respect to how to create an administrative record supporting a decision, at least at the FWS, raise the possibility that some important documents, like staff dissents, could be dropped out of the record due to sheer inadvertence.[562]

However it is accomplished, agency managers should ensure that agency staff can engage in vigorous debates that include diverse points of view, and where possible provide for the opportunity for dissent from a technical analysis or finding. While formal dissent policies, like those developed by NRC, may prove too cumbersome for all agencies, a simple written policy that explains the freedom of staff to publicly dissent and that prohibits retaliation against dissenters would seem to be helpful to encourage vigorous debate and provide enhanced scientific autonomy for agency staff.[563] Managers should defer to dissenters' requests to place dissents in the public record whenever possible. To ensure some peer review of these dissenting positions, dissenting employees should also be allowed and encouraged to publish their views in the peer reviewed literature. This right to dissent is particularly important when agencies do not provide authorship or contribution rights to scientists, and thus scientists cannot even withdraw their name as a contributor in order to express dissent. A formal dissent policy also ensures that expressions of disagreement cannot be hidden under deliberative protections claimed by a supervisor or other agency official.[564]

Much like attribution and authorship, the role of dissent and the approaches to encouraging diverse, rigorous debate among agency scientists are only beginning to be explored. It is thus premature to suggest that the right to dissent from a technical analysis should be regarded as a best practice that deserves some explanation when it is not followed. On the other hand, the importance of scientific autonomy and inviting diverse scientific views is vital to rigorous scientific work;[565] thus agency mangers should feel obliged to ensure that their processes provide for this type of debate and free exchange.

Agencies should encourage vigorous debate among agency scientists that may include developing written policies that allow agency staff to dissent

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[562] See Section IV.B.5., *infra* (discussing best practices for the development of administrative records).
[563] Agencies' scientific misconduct policies focus on intentional and reckless fabrication and thus do not even reach these good faith disagreements. *See* Section III.B.1., *supra*, and accompanying text.
[564] Protecting employees from retaliation is an extremely important feature of such a policy. Given the size and scope of these various whistleblower issues, however, the details are left for a separate ACUS report or similar investigation. NRC's more formal program, by contrast, may offer a particularly helpful model for agencies that utilize a hierarchical management structure; in these management-heavy structures, scientific information may be at even greater risk of being dropped out or adjusted as it moves up the chain of command. In other settings, however, the formality of the program may be unnecessarily costly and could even undermine a culture of collegiality for agencies that purport to be more collaborative in their preparation of analyses, like FWS.
[565] *See supra* Section I.B.4.

or express their non-concurrence on a technical analysis to which they contributed. In cases where written dissents are permitted, agency managers should take seriously a staff member's request to place a dissent or non-concurrence into the public record. Dissenting employees should also be allowed and encouraged to publish these dissenting positions in the peer reviewed literature, provided that confidential governmental deliberations are not compromised. In all cases and regardless of the public availability of these discussions, dissenting staff members should be protected from reprisals.

B. Interagency and External Constraints on Agencies that might impair the Rigorous and Transparent Incorporation of Science into Regulation

Various external constraints impede the ability of the agencies to "be transparen[t] in the preparation, identification, and use of scientific and technological information in policymaking."[566] Although this study focused only on five programs in three agencies, there are reasons to believe that the impediments identified here are not the only ones that limit agencies in their effort to develop rigorous decision-making processes for the integration of science into regulation.

The first set of constraints arises from a variety of congressional and executive branch limits to agency decision-making processes themselves, such as precluding disclosures or capping the number of science advisory boards an agency can empanel. The second set of constraints involves White House oversight of science-intensive rules that pose challenges for ensuring both the transparency and integrity of the use of science. This section discusses these challenges and suggests potential reforms.

1. Identifying and Redressing External Constraints that Impede an Agency's Efforts to Improve the Rigor and Transparency of its Use of Science

Within the five programs studied, significant sources of slippage in the agencies' development of robust decision-making processes occurred through external impediments that arise from within the Executive Branch or Congress. It would be bad form indeed to suggest that the agencies' use of science should be improved when the agencies have been placed in decision-making structures that do not allow these improvements to be made. Yet without some formal, government-wide procedures for identifying and addressing these external constraints, agencies may find themselves blocked from making useful and reasonable improvements to their decision-making processes.

Several hard constraints on the scientific transparency and rigor of agency decision-making processes arise from laws themselves. In the FWS, unreasonably short

[566] Obama Memorandum, *supra* note 6.

congressional deadlines for a decision appear to be the primary cause of the FWS's truncated analysis process for species listing and critical habitat designations.[567] Recall that the FWS is required by statute to make a listing decision within a little over a year after receiving a petition.[568] The FWS staff reiterated that these timelines are so tight that they do not provide the FWS with sufficient time to utilize external peer review panels or engage experts more actively throughout their analytical process.[569] This short timeframe has also led the FWS to resort to collaborative staff-management authored proposed rules (without an initial scientific analysis) that are less than ideal for important science-policy decisions, as detailed infra.[570] Even the development of complete administrative records supporting listing decisions may be compromised as a result of the whirlwind timeframe that governs these decisions.[571]

Statutory constraints also undermine the ability of the agencies to share with the public the underlying research the agencies use to make a decision. In EPA's pesticide program, for example, Section 10(g) of FIFRA prevents public access to studies conducted by most pesticide manufacturers unless a person is granted clearance through a certification process.[572] This section was apparently passed by Congress to prevent competitors in other countries from benefiting from safety data produced by U.S. manufacturers as required by FIFRA.[573] Yet as detailed earlier, Section 10(g) impedes public access to the bulk of the scientific research the agency considers in its registration decisions. Specifically, section 10(g) requires that a person certify that he/she will not share the information with manufacturers in other countries in order to gain access to manufacturer-provided data. But even then, access to this critical information is limited insofar as: it is allowed only after a pesticide registration decision is made; pesticide manufacturers are notified of each person who views their information; and the information must be viewed at the agency's office.[574] EPA summarizes each of these studies in data tables, but there is effectively no external oversight over this internal review of manufacturer data.[575]

In the programs examined in this study, the Paperwork Reduction Act (PRA) and Data Quality Act (DQA) were also implicated in imposing additional statutory

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[567] See Section III.A.2.
[568] *See id.*
[569] Interview with FWS Staff, Endangered Species Program, Jan. 9, 2012. The FWS engages external peer review on the proposed rule simultaneously with public comment. This has caused it to occasionally revise its proposal and reopen comment. *See* Section III.A.2. A much more streamlined and efficient process would involve expert review followed by public comment, or even more ideally two stages of peer review that occur before and after public comment.
[570] *See id.*
[571] *See id.*
[572] 7 U.S.C. § 136h(g)(1). *See* Section III.A.1.b.
[573] *See, e.g.*, 95 vol3 1978 U.S.S.C.A.N. 1966 (discussing US manufacturers concerns that data would be used by foreign competitors who would be afforded a competitive advantage as a result).
[574] 7 U.S.C. § 136a(c)(2)(A). There are some exceptions, *id.* at 136h(d), but they appear to be unusual.
[575] *See* Section III.A.1.b.

impediments on the agencies' rigorous and transparent use of science for regulation. In the case of the PRA, EPA is currently required by OMB to clear each of its requests for data from manufacturers in its pesticide registration program through OMB.[576] This process can involve an additional six months of delay on each pesticide registration decision. The PRA clearance also raises a risk (as yet unrealized) that some of EPA's requests for data might ultimately be blocked by OMB.[577] If this occurs, EPA may lack data it believes is essential to conduct its pesticide assessment, and yet again the reasons for this data shortfall would be protected by deliberative process. Somewhat similarly, OMB enjoys general oversight of the agencies' compliance with the Data Quality Act,[578] and there was some indication that at least in the IRIS program, OMB may be using DQA complaints as a way to regain control as the primary clearance authority over select IRIS assessments.[579]

Finally, although information was difficult to locate for purposes of comparison, insufficient legislative appropriations to support an agency's science-based regulatory program can also impact the agency's ability to do its analyses rigorously and in a timely way. Resource limitations appear to be a significant external constraint on the FWS's listing process for example.[580] The FWS's small budget allows it to allocate roughly $250,000 to its analysis and deliberations dedicated to listing a single species and a total of $300,000 to $500,000 for a complete habitat designation and listing rule.[581] For purposes of comparison, the NRC allocates on average $4 million to its analysis of the renewal of a license for one nuclear power plant and this licensing process occurs over the course of nearly two years, in comparison to the one year afforded the FWS.[582] Although estimates of the costs of EPA's programs were not available,[583] informal speculation by staff in the NAAQS program placed the cost of conducting one revision of an air quality standard closer to the NRC's budget than the FWS's allowance.[584] Whatever the case, it would be disingenuous to demand that an agency improve the integrity and transparency of its use of science if it is not provided funding adequate to do the work, at least in comparison to other agencies. Thus, the under-funding of agency scientific work is also an important external constraint that deserves exploration and potentially supportive advocacy by the OSTP.

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[576] *See id.*
[577] Interview with EPA Staff, Office of Pesticide Programs, August 5, 2011.
[578] *See* Curtis Copeland and Michael Simpson, The Information Quality Act: OMB's Guidance and Initial Implementation (Aug. 19, 2004), available at http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA445489 (describing OMB's role in the DQA).
[579] *See, e.g.*, GAO, CHEMICAL ASSESSMENTS, *supra* note **152**, at 24-26.
[580] Interview with FWS Staff, Endangered Species Program, Jan. 9, 2012.
[581] *Id.*
[582] *See* OIG, License Renewal Report, *supra* note 273, at 4.
[583] Estimates of the costs for the review of pesticide registrations may be available and the author is still tracking that figure down.
[584] Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012.

Constraints arising purely within the Executive Branch further obstruct the agencies' effort to develop robust processes for their use of science. For example, to the extent that important non-written conversations between OMB and the agency lead to changes in science-based rules during OMB review under Executive Order 12866, these communications are non-divulged or explained as they are at other stages in the process; at best one must speculate at why various changes were made to an agency rule before publication. Caps on the number of discretionary FACA committees within an agency, established by President Clinton under Executive Order 12838, also serve as a barrier to the agencies' effort to enlist external peer review of their regulatory work.[585] Both the EPA's IRIS and the FWS's programs generally use contractors to solicit external peer review in order to avoid these and other restrictions imposed on the agencies' use of FACA.[586] EPA officials in particular lament that the FACA limitations, such as the arbitrary cap on the total number of discretionary advisory committees an agency may host, render it difficult to use advisory committees for IRIS risk assessments. Since a FACA science advisory panel is more likely to provide the agency with a cohesive and comprehensive set of unified comments as compared with comment letters from individual expert reviewers, IRIS officials believe a FACA panel is the preferred option.[587] Caps on discretionary FACA committees, however, cause agencies to abandon efforts to convene advisory committees in favor of employing independent reviewers. The use of individual peer reviewers who are not able to confer, in turn, may serve exacerbate the already unwieldy and even conflicting comments that the agency must address, yet this time coming from external experts.[588]

There are statutory and regulatory constraints that limit the ability of the agencies to ensure that their decisions are scientifically robust and transparent in keeping with the President's Directive. The agencies should identify these legal barriers that impede public access to the scientific information underlying agency analyses or otherwise block the agencies' development of scientifically robust decision-making processes and OSTP or other centralized agencies can take responsibility for collecting information and proposing government-wide recommendations.

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[585] *See* Executive Order 12838 and OMB Circular A-135 (requiring agencies to reduce the number of discretionary advisory committees by one-third). ACUS has recommended rescinding this cap on FACA committees. *See* ACUS Recommendations 2011-7 at 10, available at http://www.acus.gov/wp-content/uploads/downloads/2011/12/Recommendation-2011-7-Federal-Advisory-Committee-Act.pdf.

[586] Interview with FWS Staff, Endangered Species Program, Jan. 9, 2012; Interview with EPA Staff, National Center for Environmental Assessment, Feb. 3, 2012. This reluctance by agency to use FACA committees due to the approval and paperwork requirements is explored in Reeve Bull, The Federal Advisory Committee Act: Issues and Proposed Reforms, Sept. 12, 2011, available at http://www.acus.gov/wp-content/uploads/downloads/2011/09/COCG-Reeve-Bull-Draft-FACA-Report-9-12-11.pdf, at 47-49.

[587] Interview with EPA Staff, National Center for Environmental Assessment, Office of Research and Development, Feb. 3, 2012.

[588] *Id.*

2. Review by OIRA and Other White House Offices and Agencies

Evidence reveals that OIRA review can lead to material changes to science-based rules that are not always disclosed consistent with the directives of Section 6(a)(3)(E) of Executive Order 12866. A process that allows potentially significant changes to be made to science-based rules without public or expert review heightens the risk that some of these changes will be made in ways that conflict with public understanding and the scientific record.[589] At the very least, substantive changes that are made to important science-based rules at the suggestion of OIRA should be clearly identified in the public record and some justification should be provided for each change for the public, consistent with the letter and spirit of Executive Order 12866 and President Obama's memorandum on transparency. This section offers recommendations to improve the rigor and transparency of the decision-making process for science-intensive rules, from the beginning to the end of the regulatory action.

Before proceeding, it is important to remind the reader that the arguments in this report are concerned only with changes made by White House offices to technical or scientific features of a regulation. Deliberations between agencies and White House offices over the appropriate choice of political values, issues of statutory or other legal interpretations, and economic and social considerations are beyond the scope of this analysis except in cases that they impact on the agencies' use or characterization of technical or scientific information.

a. *Improving the Transparency of OIRA Review*

There is a solid body of evidence that OIRA review can lead to material changes to scientific or highly technical features of some proposed and final rules, but these changes are neither explained nor even disclosed.[590] Indeed, this lack of transparency of OMB review seems particularly inappropriate for standards like NAAQS that are subjected to repeated rigorous peer and public review during their development, but then are negotiated out of the public eye once the rules undergo review by OMB. The

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[589] See, e.g., House Report.

[590] *See, e.g.,* Section III.A.1.a., *supra*; *see generally* Mendelson, *supra* note **76**, at 1146-59 (2010) (discussing the lack of transparency of OMB review); Heidi Kitrosser, *Scientific Integrity: The Perils and Promise of White House Administration*, 79 FORDHAM L. REV. 101, 117 (2011) (discussing secret role of OMB in agency oversight); Majority Staff, Nipping IRIS In the Bud, *supra* note 359, at 1 (detailing the extensive secrecy that surrounds OIRA review, even with respect to Congress' effort to understand OIRA's role in programs like IRIS); Rena Steinzor, Michael Patoka, and James Goodwin, Behind Closed Doors at the White House: How Politics Trumps Protection of Public Health, Worker Safety, and the Environment (Nov. 2011), available at Rena Steinzor, Michael Patoka, and James Goodwin, Behind Closed Doors at the White House: How Politics Trumps Protection of Public Health, Worker Safety, and the Environment at 34-37 (Nov. 2011); *see also* GAO 2003, *supra* note 307, at 100 ("Overall, we often found it difficult to identify the changes that had been made to agencies' rules during OIRA's review and/or at the suggestion or recommendation of OIRA by reviewing material in the agencies' rulemaking dockets").

NAAQS rules examined here are not the only example of science-intensive rules that have been subjected to undisclosed changes at the suggestion of OIRA, however.[591] In the IRIS program, which actually falls outside the reach of Executive Order 12866 review since it does not produce a final regulation,[592] there is still no accounting for all of the changes that have been made to IRIS profiles as a result of OMB's and other interagency suggestions since significant discussions still occur by phone or through meetings which are withheld as deliberative process.[593]

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[591] Two former OMB employees and a number of EPA staff in the NAAQS program, for example, recounted how OMB can get "deep" into the science (and associated policy) of EPA's regulatory projects. Interview with former OMB Staff Member, Jan. 9. 2012; Interview with former OMB Staff Member, Feb. 3. 2012; Interview with EPA Staff, Office of Air Quality Planning and Standards, Jan. 17, 2012; Interview with EPA Staff, National Center for Environmental Assessment, Jan. 18, 2012. One EPA staff member suggested that many of OMB's comments were actually useful in tightening the scientific analysis for IRIS assessments, but they were often not material enough to justify the extended delay and added transaction costs. The EPA scientist noted that because OMB formerly had final clearance authority over the draft assessment, the agency was at its mercy; OMB typically requires the agency to make every change it suggested, whether major or minor before it will clear the draft or final IRIS assessment for publication. *See* Interview with EPA Staff, National Center for Environmental Assessment, Jan. 18, 2012. Moreover, in some rulemakings OMB solicited and collated comments from other agencies, yet it does not attribute the comments to the agency making the comments. *Id.*

A number of published accounts in the literature also reveal evidence of OMB's willingness to delve into all features of an agency's science-based decision in carrying out its review of rules and other regulatory projects, but in ways that are not subjected to rigorous public or expert oversight. *See, e.g.*, GAO, Chemical Assessments, *supra* note **152**, at Appendix III (discussing OMB's role in several EPA IRIS assessments); Kitrosser, *supra* note 590, at 2407 (discussing OMB's potentially negative role in compromising scientific integrity of publicly provided information in the BP oil spill); Mendelson, *supra* note **76**, at 1152-57; Rena Steinzor, *The Case for Abolishing Centralized White House Regulatory Review*, 1 MICH. J. OF ENVTL. & ADMIN. LAW 247-68 (forthcoming 2012); Rena Steinzor, Michael Patoka, and James Goodwin, Behind Closed Doors at the White House: How Politics Trumps Protection of Public Health, Worker Safety, and the Environment (Nov. 2011); Peter L. Strauss, *Possible Controls over the Bending of Regulatory Science, in Anthony, et. al eds.,* VALUES IN GLOBAL ADMINISTRATIVE LAW 126-27 (2011) (discussing OIRA's role in the NAAQS ozone standard and referring a similar episode with respect to a proposed regulation to protect an endangered whale from collisions with larger boats); Tatham, *supra* note **76**.

Surveys of EPA employees conducted by the Union of Concerned Scientists provide still more evidence of "OMB's meddling in EPA decision making [in a way that constitutes] . . . a major hindrance to the agency's scientific integrity." Union of Concerned Scientists, Interference at the EPA at 28 (2008) (reporting this finding in nearly 100 surveys conducted of employees in 2007, out of a total of 1586 surveys that were returned).

[592] The IRIS program does not result in published binding standards and thus is not a "regulatory action" as defined by Executive Order 12866, yet OMB has appeared to play a significant role in the development of these standards over the last few decades. See supra Section III.A.2.; Majority Staff, Nipping IRIS In the Bud, *supra* note 359, at 1.

[593] It is possible to access the interagency discussions for some IRIS chemicals by visiting http://cfpub.epa.gov/ncea/iris_drafts/archiveDrafts.cfm#C_form and accessing interagency comments (the last column). For a sample of these OMB comments, see, e.g., OMB Staff Comments on Acrylamide, available at http://cfpub.epa.gov/ncea/iris_drafts/recordisplay.cfm?deid=22440; OMB Comments on Carbon Tetrachloride, available at http://cfpub.epa.gov/ncea/iris_drafts/recordisplay.cfm?deid=56725. See Appendix F for a sample OMB comment letter. For a few profiles, EPA's responses to "selected major interagency" are available for at least the first round of interagency review. See EPA's Response to Selected Major Interagency Comments on the Interagency Science Consultation

Fortunately, existing requirements already anticipate and seek to prevent at least some of these lapses in transparency; the recommendations offered here simply call upon the agencies to come into full compliance with these existing requirements. Recall that Executive Order 12866 requires agencies to provide a record of the substantive changes made during OIRA's review,[594] and OMB's own peer review bulletin requires significant science-based decisions to undergo peer review.[595] Yet currently the agencies and OMB are not in full compliance with many and in some cases all of these requirements of Section 6 of the Executive Order. As discussed in the next section, OMB may also not be in compliance with its own Peer Review Bulletin.

The most important noncompliance with Section 6 occurs within the agencies. For at least the rules included in this study, there was no meaningful compliance by the agencies with the requirements of Section 6(a)(3)(E)(iii).[596] Specifically, there was no documentation or attribution of the "changes made at the suggestion or recommendation of OMB", or at least the documentation was not discovered after a relatively time-intensive search of the rulemaking dockets. Even agency compliance with Section 6(a)(3)(E)(ii), which requires "complete, clear, and simple" documentation of "the substantive changes between the draft submitted to OIRA for review and the action subsequently announced" was incomplete; red-lined documents that highlight changes made during the formal review were available only for two-thirds of the rules and a 2009 GAO study reports even lower compliance rates across a larger number of agencies.[597] Moreover, in no case was any of this documentation required by these subsections easy to locate or provided in "plain understandable language" as required by Section 6(a)(3)(F) and 6(b)(5).

To ensure agency compliance with Executive Order Section 6(a) in the future, the agencies should produce a memorandum or similar document that outlines, in plain, understandable language, all of the major, substantive changes made as a result of OIRA's review.[598] While agencies tend to produce red-lined documents to satisfy this

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Draft IRIS Toxicological Review of 1,4-Dioxane (inhalation exposure route only), September 15, 2011, available at http://cfpub.epa.gov/ncea/iris_drafts/recordisplay.cfm?deid=237251 . A similar document does not appear to be available for the second round of interagency review. See, e.g., the list of documents posted for the interagency discussion for the same profile, available at http://cfpub.epa.gov/ncea/iris_drafts/recordisplay.cfm?deid=122848

[594] Section 6(a)(3)(E)(ii).

[595] OMB, Peer Review Bulletin, supra note 465.

[596] *See supra* Section III.A.4.a.; *see also* GAO 2003, *supra* note 307, at 101 (reaching a similar conclusion).

[597] *See id.* at 13

[598] *See also* GAO 2009, *supra* note 316, at 35 (recommending that the transparency requirements should be applied to the "informal review period when OIRA says it can have its most important impact on agencies' rules"); Mendelson, *supra* note 76, at 1164 (recommending that OMB review should be made transparent and that to accomplish this the agency would "need to summarize the critical details of, say, executive review positions and explain the extent to which those positions are connected to the agency's ultimate

requirement, additional, more accessible identification of all major, substantive changes is needed as well. Although there were no "best practice" models of this type of documentation arising in this study, there are possible best practices models for (E)(ii) disclosure in other agency programs.[599] Samples of more complete documentation are provided in Appendix I. In these samples, the agencies provide a red-lined version of all changes made during OIRA review, but supplement it with a cover memorandum that identifies all of the major changes to the preamble and rule in a clear, understandable form. While this disclosure appears to provide an identification of only the changes occurring during OIRA's formal review, the same memorandum format could be used for changes made outside of the formal window as well.

Moreover, to make both documents practically accessible to the public (rather than theoretically available), the agency should post them in a centralized website dedicated to documenting all major changes made at the suggestion of OIRA throughout the rulemaking and documenting all substantive changes occurring during formal OIRA review, regardless of the source of the change.[600] Where possible and in keeping with some current agency practices, the agency's docket should also contain all significant, substantive documents exchanged between the agency and OMB. This documentation ideally will provide the public with a means to ensure that the agency has in fact complied with the requirements of Section 6(a)(3)(E) in its identification of changes and other disclosures. This document repository should also be cataloged as its own, separate category of documents in the regulations.gov classification of documents. That category would separate out those documents relevant to OMB review and allow, with one click, for OMB-agency documents to be searched and extracted from a larger public docket.

The agencies should also extend these transparency requirements to other significant, science-intensive agency support projects, such as IRIS profiles and science-intensive guidances and policy documents, as well as the reports and studies that inform these projects and other rulemakings. The literature suggests that agencies may already be inclined to avoid informal rulemakings to avoid formal notice and comment requirements and ultimately the threat of judicial review.[601] To redress the substantially

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decision"); *id.* at 1167 (recommending that "at the time the agency publishes its proposed or final rule, the agency would have to summarize the final position reached in the executive review process.").

[599] *See, e.g.*, GAO, 2003, *supra* note 307, at 101 (discussing EPA's Office of Water documentation of the changes arising in OIRA review, which appear much more extensive than the documentation encountered in this study) ; see also GAO 2009, at 36 (providing a similar recommendation – see recommendation #7). EPA initiated such a site, although it is not clear if it is regularly updated and it does not provide all of the information suggested in this report, even for the rules that appear relatively up-to-date. See http://yosemite.epa.gov/opei/RuleGate.nsf/.

[600] GAO has made a similar recommendation. *See* GAO 2009, *supra* note 316, at 36 (recommendation #6).

[601] *See, e.g.*, Jerry L. Mashaw & David L. Harfst, *Regulation and Legal Culture: The Case of Motor Vehicle Safety*, 4 YALE J. ON REG. 257, 273-74 (1987) (discussing how judicial review has caused NHTSA to avoid rulemaking in favor of recalls); Peter H. Schuck, *When the Exception Becomes the Rule: Regulatory Equity and the Formulation of Energy Policy Through an Exceptions Process*, 1984 DUKE L.J. 163, 165-68, 194-98 (discussing how the procedural obstacles posed primarily by judicial review and

reduced transparency requirements governing agency decision-making in these alternative forms of regulatory requirements, the default rule should be that these same transparency requirements of Section 6 – namely at least the identification of all major changes made at the suggestion of OIRA -- apply to all significant regulatory projects, regardless of whether the agency product is an informal rule or some other type of regulatory product, like an IRIS profile, or supporting study or analysis. Agencies should also comply with the Section 6 requirements for rules that have been withdrawn from OIRA review or where OIRA encouraged agencies not to submit rules in the first place.[602]

Finally, since there is evidence of noncompliance with the requirements of Executive Order 6 by the agencies, some centralized mechanism of tracking compliance and sanctioning noncompliance should be instituted. Ideally, agencies should maintain a separate webpage dedicated to Section 6(a) compliance for their rules; the webpage would identify for each proposed and final rule the "substantive changes" made during OIRA review as well as the major "changes made at the suggestion or recommendation of OIRA" at any point in the regulatory process in publicly accessible ways. Alternatively, agencies should at least routinize their documentation so that these documents are easier to locate and understand within individual rulemaking dockets.

It is important to note that the GAO identified these same lapses in compliance with the Executive Order in two separate reports, and yet its detailed recommendations – directed exclusively at OMB – have been largely ignored.[603] Although the recommendations offered for enhancing Section 6(a)(3)(E) compliance in this report largely parallel these GAO recommendations, they are different in one important respect; the recommendations here are directed primarily at the agencies, rather than OMB. It is the agencies that are the responsible parties under Executive Order 12866 for documenting the changes made at the suggestion of OIRA and occurring during OIRA review.[604] This structure, by design, places the agencies in the central role of disclosing the effects of OIRA review rather than placing that responsibility on OIRA, which is presumably more conflicted in documenting its own influence, although the agencies may be somewhat conflicted themselves.[605] OMB's failure to coordinate, oversee, or counsel

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executive order led the Department of Energy to abandon policymaking through rulemaking in favor of policymaking through individual adjudications by an office authorized to make special exceptions to existing rules).

[602] GAO makes a nearly identical suggestion. *See* GAO 2009, *supra* note 316, at 36 (recommendation #4).

[603] In its first report in 2003, GAO made eight separate recommendations to improve compliance, all of which were directed at OMB as the coordinator of the Executive Order. As of 2009, only one of the recommendations had been adopted by OMB and in 2013, it appears that the seven (most of which parallel the recommendations here) were still unaddressed. *Id.* at 35 and 39.

[604] See Sections 2(a) and 6(a) of Executive Order 12866.

[605] OMB not only reviews and coordinates the agencies' budget requests, but it is a direct arm of the White House and thus exerts an authoritative institutional presence. OMB is thus likely to command considerable respect from the agencies.

agencies on their compliance obligations under Section 6(a) – particularly when repeatedly confronted with a series of specific recommendations that it provide this leadership by GAO – reinforces the import of ensuring that agencies follow through on their Section 6 responsibilities.

Under Section 2(a) and 6(a) of Executive Order 12866, the agencies are responsible for interpreting and complying with Section 6(a). The agencies' compliance under Section 6(a) should include at the very least:

1) documentation of the major changes made at the suggestion or recommendation of OIRA at any point in the lifecycle of the regulation as required by Section 6(a)(3)(E)(iii) and 6(a)(3)(F). If there are no major changes, then the agency should provide a statement to that effect;

2) an identification of all substantive changes made between the draft submitted to OIRA for review and the action subsequently announced in compliance with Section 6(a)(3)(F)(ii). This includes but is not limited to a red-lined version of the document undergoing OIRA review;

3) for both #1 and 2, the agencies should provide a "complete, clear, and simple" identification and explanation of each major change in "plain, understandable language" for the public. Explication of these major changes should be accessible to the public – through for example a cover memorandum --- and not buried in hundreds of pages of red-lined documents. Although the Executive Order technically requires this accessible explication of all changes (and not simply the major changes) made at the suggestion of OIRA, a disclosure of the major changes is considerably less burdensome and appears consistent with the thrust of the Executive Order;

4) a library of all significant, substantive documents exchanged between OIRA and the agency throughout the life cycle of the regulatory action to ensure that the agency is in full compliance with Section 6(a)(3)(E)(ii) and (iii).

5) centralized public access to the information specified above to ensure practical, as opposed to merely theoretical, compliance with the general requirements of Section 6(a)(3)(E) and (F). Both reginfo.gov and regulations.gov should link to or provide the public with document libraries that enable simple access to and searching of documents required under Section 6.

Agencies should apply these same requirements of Section 6(a)(3)(E), as interpreted above, to all significant science-intensive regulatory actions, including agency guidances and other standards and policies, whether or not they are published in the Federal Register, as well as to all significant, supporting studies and projects that inform science-intensive agency rules, guidances, policies and related products. The requirements should also apply to all rules that are withdrawn, whether ORIA has reviewed them or not.

b. *Ensuring the Transparency and Scientific Integrity of Influence in Science-intensive rules from White House Offices, beyond OMB, and Other Agencies*

Executive Order 12866 and the OMB Peer Review Bulletin ensure increased transparency and scientific integrity for OIRA review, but they do not apply to the other White House offices or to suggestions made by other agencies. To the extent that some changes to science-intensive rules are made at the behest of these other offices, such as the Office of the President, CEQ, or OSTP or other agencies, there appears to be no requirements to ensure that the changes are disclosed, justified or reviewed.[606] Additionally, as OMB's influence in science-intensive rules is documented more completely under Section 6 of Executive Order 12866, the resulting heightened transparency surrounding OMB review may simply cause these other offices and agencies to play an even greater behind-the-scenes role in editing high stakes agency rulemakings. When rules are highly technical and complex, it is important to ensure the rules are subjected to vigorous public and scientific oversight, up until their final promulgation. This is not possible if changes can be inserted without disclosure and at the eleventh hour.

While further analysis and research is needed to determine how best to strike the balance between the President's need for deliberative processes versus the benefits of transparency of material changes to science-intensive rules, in the interim the agencies should disclose changes made at the suggestion of White House offices and other agencies if doing so does not undermine the deliberative process. In some and perhaps many cases substantive changes are made and whose public recognition would not threaten deliberative processes and that would benefit from disclosure and heightened public and scientific review. The agencies should work closely with White House offices and other agencies to ensure that when changes are made that can be disclosed, they are cataloged as well in keeping with the direction and spirit of Section 6.

Beyond extending Section 6(a)(3)(E)(iii) disclosures to some of the other changes made at the suggestion or recommendation of White House offices and other agencies, the other recommendations produced in this report may help mitigate some risks of nontransparent changes of science-intensive rules. For example, adopting the NAAQS analytic process discussed earlier will at least draw out the ways that science informed the rule through the course of its development, which in turn make the identification of last minute changes easier to locate in a voluminous record. Additionally, ensuring that the agency's assessments of the literature provide attribution to agency staff provides these authors with some stake in ensuring the reports and accompanying literature is not misrepresented later in the process. And a dissent policy, if framed broadly enough, can

[606] This may be problematic to the extent there are allegations of "politicization of science" stemming from the White House. *See generally* Percival, supra note 355 (describing more recent incidences, which include some politicization of science); OIG MacDonald Report, *supra* note 11.

allow staff to take issue with changes to rules that diverge from the scientific evidence developed during rulemaking process. While none of these reforms are magic bullets for this broader problem of the politicization of science, they are at least steps in the right direction.

The agency should disclose material changes made at the suggestion or recommendation of White House offices or other agencies, consistent with Section 6(a)(3)(E)(iii), when doing so does not impair the deliberative processes.

C. Enhancing the Transparency of Research produced by Regulated Parties

Agencies often rely on research produced by private parties in reaching science-intensive regulatory decisions, yet there is considerable evidence that this sponsor-produced research can be permeated with various biases – both overt and covert – that affect the ultimate outcomes.[607] Meta analyses of studies in biomedical medicine, for example, reveal strong statistical evidence of a "funding effect", in which research funded by a sponsor produces research outcomes that are much more favorable to that sponsor than research produced independently, without any financial conflicts.[608]

While agencies review this applicant-submitted information carefully,[609] in a number of cases this sponsored research is not accessible to outside parties for additional verification and oversight. Indeed, in some cases the agency scientists themselves may not be fully apprised of the circumstances surrounding the sponsor's role in influencing the research design, implementation, or reporting. Trade secret and related classifications, as well barriers to public access to manufacturer research under FIFRA, only serve to drive a further wedge between the parties producing this research and the ability of others, even those within government, to review it.

Despite evidence of bias in sponsored research, existing federal laws and regulation treat private research gingerly with respect to disclosure requirements; indeed, private research is exempted from virtually all of the transparency requirements imposed on federally funded research.[610] The laws and regulations, in other words, do precisely the opposite from what the underlying quality of the research would demand. They tend to insulate private research from scrutiny and focus attention on public research.

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[607] *See, e,g.*, Justin E. Bekelman, Yan Li, & Cary P. Gross, *Scope and Impact of Financial Conflicts of Interest in Biomedical Research*, 289 JAMA 454 (2003).
[608] Wendy Wagner and David Michaels, *Equal Treatment for Regulatory Science: Extending the Controls governing the Quality of Public Research to Private Research,* 30 AMERICAN JOURNAL OF LAW & MEDICINE 119, 122 (2004); *see also infra* note 616 (citing numerous sources).
[609] Interview with EPA Staff, Office of Pesticide Programs, Jan. 27, 2012.
[610] Wagner & Michaels, *supra* note 608, at 129 (documenting this).

A first, simple reform to address this nontransparency of private research used for regulation is a set of rules that treat private and public research similarly with regard to the public accessibility of the data and studies and that require disclosures regarding the provenance of the research used for regulation. While additional interventions may ultimately be needed to address more entrenched features of sponsor bias (like rejecting all research in which sponsors reserve the right to influence or control research),[611] the recommendations offered here take only the first step and are thus extremely modest in their reach. These recommendations are not only anchored in an extensive literature, but are excerpted generously from the Bipartisan Policy Center[612] and the Keystone Center reports.[613]

It should be noted that this short but dense set of recommendations owes its origins to the NAS meeting and to OSHA Administrator David Michaels in particular, who suggested that the report also address of the most egregious transparency issues associated with privately produced research used for regulation.[614] In sharp contrast to some of the issues identified in the final section of this report that are in need of further study – especially external expert review[615] – the disparate treatment of private versus public research has been studied extensively. To avoid adding still more volume to the final report, the reader is referred to some of the extensive documentation of these problems that serve as the basis for reform.[616]

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[611] *See, e.g.*, Woodruff et al., *supra* note 492 (advocating this exclusionary rule for literature analyses in clinical medicine).

[612] *See* Bipartisan Policy Center, *supra* note 2.

[613] Since both projects were bipartisan, they provide the primary source of recommendations even though there are other excellent reports (to which I contributed) that provide still more fodder for recommendation, most notably the Center for Progressive Reform Report Perspective: Clean Science, available at http://www.progressivereform.org/perspscience.cfm, and CPR, Saving Science from Politics: Nine Essential Reforms of the Legal System, available at http://www.progressiveregulation.org/articles/SavingScience805.pdf.

[614] *See* NAS Transcript, *supra* note 503, at 146-47 (statement of Dr. Michaels).

[615] The last rigorous study of external peer review of regulatory science was done by Sheila Jasanoff in 1990. SHEILA JASANOFF, THE FIFTH BRANCH: SCIENCE ADVISERS AS POLICYMAKERS (1990). In this outstanding study, Prof. Jasanoff identifies a number of critical issues that deserve further study – few if any of which have been addressed since. Moreover, as expert review has become increasingly popular, more issues and concerns have arisen regarding its proper implementation. For example, Prof. Jasanoff pays only limited attention to the problems of conflicts in expert reviewers in her 1990 study, but this issue currently appears to rank as the most difficult and important problem with expert advisory review, at least according to the emphasis placed on the issue by both the Bipartisan Center and the Keystone Center reports.

[616] *See, e.g.*, SHELDON KRIMSKY, SCIENCE IN THE PRIVATE INTEREST (2003); DAVID MICHAELS, DOUBT IS OUR PRODUCT (2008); NAOMI ORESKES & ERIK CONWAY, MERCHANTS OF DOUBT (2009); THOMAS O. MCGARITY & WENDY E. WAGNER, BENDING SCIENCE: HOW SPECIAL INTERESTS CORRUPT PUBLIC HEALTH RESEARCH 233-39 (Harvard University Press 2008); RESCUING SCIENCE FROM POLITICS (Wendy Wagner & Rena Steinzor eds. 2006); Wagner & Michaels, Equal Treatment, *supra* note 608.

1. Disclosure of Conflicts of Interest[617]

Studies reveal that sponsorship can bias results; yet despite the value of transparency about the provenance of regulatory resesarch, the disclosure of sponsor influence is generally not required or even requested by federal regulatory agencies. The EPA, the Occupational Safety and Health Administration, the Mine Safety and Health Administration, the Consumer Product Safety Commission, and the National Highway Traffic Safety Administration have no formal mechanisms to identify potential conflicts of interest, nor do they provide any incentive to encourage the conduct of research that is free of sponsor control. The Food and Drug Administration (FDA) has instituted a conflict policy requiring financial disclosures for safety research conducted by private parties in support of a license to market a drug or food additive.[618] These disclosures do not, however, distinguish between research where the sponsor controls the design or reporting of the research and research where sponsors have no control.

Regulatory agencies should adopt, at a minimum, requirements for disclosure comparable to those of biomedical journals.[619] The Keystone report reinforces this conclusion: "information on what entities or individuals funded a study should be readily available."[620] "[E]stablishing and documenting the funder's involvement with any given study, and any restrictions placed on the study's release" is also central to a comprehensive literature review.[621] Disclosure of conflicts of interest should be required for all research, regardless of whether it is federally or privately funded. Scientists should disclose whether they have a contractual right to publish their findings free of sponsor control and should identify the extent to which their work was reviewed by an affected party before publication or submission to the agency. Sponsors who submit data should similarly disclose if their investigators had the contractual right to publish without sponsor consent or influence. Finally, other parties (i.e., trade associations, unions, or public interest groups) who submit scientific results should disclose all known conflicts of interests of the scientists conducting the studies.

Regulators should not use conflict disclosures to exclude research; they have the obligation to consider all evidence, according greater importance to studies of higher quality and relevance. Federal agencies should, however, develop policies that strongly encourage clear disclosures that counteract the strong incentives for sponsors to influence research. "[Without these basic disclosures,] agencies and scientific advisory committees

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[617] This section is taken almost verbatim from David Michaels and Wendy Wagner, *Disclosure in Regulatory Science*, 302 SCIENCE 2073 (2003).
[618] 21 C.F.R. Part 54.
[619] See, e.g., ICJME Uniform Requirements for Conflicts of Interest, available at http://www.icmje.org/ethical_4conflicts.html ; ICJME Uniform Requirements for Authorship, available at http://www.icmje.org/ethical_1author.html
[620] Keystone, supra note 499, at 20.
[621] *Id.* at 24.

should be extremely skeptical of a scientific study unless they are sure that the principal investigator(s) (as opposed to the sponsor or funder) had ultimate control over the design and publication of the study."[622] Only then can agencies accurately weight studies and encourage research independence.

Due to the difficulties of applying a conflict disclosure to past research, agencies should require conflict disclosures for future research as a first step. These disclosures will necessarily involve varying levels of detail depending on the import of the information. The disclosure should be required at least when the information is appended to comments or submitted as part of an application to obtain a license or permit.

Agencies should require conflict disclosures on all future research submitted to inform an agency's licensing, regulatory, or other decision-making process -- whether published and unpublished. This conflict of interest disclosure should be similar to the conflict of interest disclosure required by the biomedical journals. See See ICJME Standards. The regulatory conflict of interest disclosure should also, where possible, identify whether a sponsor reserved the right to participate in the design of the research; the collection of data; the interpretation of data; the writing or disseminating the report, or any other material features of the research. Finally, "[a]gencies and scientific advisory committees should be extremely skeptical of a scientific study unless they are sure that the principal investigator(s) (as opposed to the sponsor or funder) had ultimate control over the design and publication of the study."[623]

2. Data Disclosures in line with OMB Circular A-110 for All Regulatory Research[624]

Although some of the private data underlying regulation are already available in theory, in practice, public access to these data can be quite limited. In licensing programs for drugs, pesticides, and toxic substances, for example, the FDA and the EPA do demand access to data in advance as a condition to accepting studies for regulatory purposes, but the data often remain buried in agency files, or in some and perhaps many cases is stored in company files rather than in agency files, where it is insulated from FOIA requests.[625]

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[622] Bipartisan Policy Center Report, *supra* note 2, at 42.
[623] *Id.*
[624] This section is drawn almost verbatim from McGarity & Wagner, Bending Science, *supra* note 616, at 244.
[625] Thomas O. McGarity, *Federal Regulation of Mad Cow Disease Risks*, 57 Administrative Law Review 292, 318–319 (2005).

Under the Data Access Act, all publicly grant-funded research that informs regulation must be publicly accessible with very limited exceptions.[626] "[I]n general, the data on which conclusions are based should be available, regardless of who funded or conducted the study."[627] This second recommendation simply extends the Data Access Act to privately submitted research. In extending the Data Access Act to all research, it might also be appropriate to take the additional step of requiring the privately produced data submitted in at least an application for a license or permit to be posted on the internet to ensure ready public access. While legislation or an OMB directive would provide the most centralized means for extending the Data Access Act in this fashion, agencies can extend the reach of the Data Access Act in their implementation of individual programs or through their inherent authorities.

> **"Studies used in the formulation of regulation should be subject to data access requirements equivalent to those under the Data Access Act (Shelby Amendment) and its implementing circular (OMB Circular A-110) regardless of who funded the study. If a study is used by an agency to inform the development of a regulation, then the same kinds of information about that study should be available upon request, regardless of whether the study was funded by the federal government, industry, or some other entity."[628]**

[626] Wagner & Michaels, *Equal Treatment, supra* note 608, at 137-38.
[627] Keystone Center Report, *supra* note 499, at 20.
[628] Recommendation copied verbatim from Bipartisan Policy Center Report, *supra* note 2, at 43.

3. Minimizing Unsupported and Outdated Confidential Business Information Claims[629]

Considerable evidence reveals that companies use the nebulous "trade secret" claim to unjustifiably insulate from public view some of the information they must nevertheless share with regulators, like basic information on chemical structure or even some toxicity information.[630] In most EPA programs, classifying information as trade secret protected is easy to do: a company need only stamp the information "confidential business information" and the claim automatically applies, unless an outside party seeks the information under the FOIA.[631] In fact, even if the agency discovers that a claim is wholly without basis— usually in the course of responding to an FOIA request—there is no penalty.[632] As a result, from a company's perspective, there is little to lose and a great deal to be gained from routinely claiming trade secret protection, since the classified information is at least temporarily removed from public view. A number of companies in fact appear to be taking full advantage of this permissive program. Investigations conducted by the EPA, the General Accounting Office, and an outside consulting group all found a significant amount of unjustified overclaiming.[633]

Some regulated parties have candidly conceded that they sometimes illegitimately claim trade secret protection.[634] Furthermore, they defend the EPA's overly protective approach on the ground that any agency-imposed requirement to justify the numerous trade secret claims already in existence would violate the Regulatory Flexibility Act

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[629] The text is borrowed almost verbatim from McGarity & Wagner, Bending Science, *supra* note 616, at 116

[630] *See, e.g.*, Wagner & Michaels, *Equal Treatment, supra* note 608, at 129-35, 151-54.

[631] *See* Environmental Protection Agency, "Public Information and Confidentiality: Advance Notice of Proposed Rulemaking; Withdrawal of 1994 Proposed Rule," 65 *Fed. Reg.* 80394, 80395 (December 21, 2000).

[632] *See generally* 40 C.F.R. §§ 2.201–2.310. *See also* Christopher J. Lewis, *Comment, When Is a Trade Secret Not So Secret?: The Deficiencies of 40 C.F.R. Part 2, Subpart B*, 30 Environmental Lawyer 143, 171–172 (2000).

[633] Environmental Protection Agency, "Public Information and Confidentiality Regulations," 59 Fed. Reg. 60446, 60446–60447 (November 23, 1994); U.S. General Accounting Office, *Toxic Substances Control Act: Legislative Changes Could Make the Act More Effective* 56-58 (Washington, D.C.: GAO, 1994); Hampshire Research Associates, Inc., *Influence of CBI Requirements on TSCA Implementation* 4 1 (March 1992) (report obtained from EPA through FOIA and on file with authors); *see also* Environmental Protection Agency, Confidential Business Information (CBI) Review, Pesticides: Freedom of Information Act, www.epa.gov/pesticides/foia/cbi.htm (listing environment-related information that is commonly claimed as confidential).

[634] Both the Keystone and the bipartisan reports acknowledge that CBI is overused today. *See* Keystone Center Report, *supra* note 499, at 21; Bipartisan Center Report, *supra* note 2, at 43. Underlying these bipartisan acknowledgements is extensive documentation of the overuse of CBI to classify information that has no conceivable trade secret value, much less trade secret value that overrides the public's interest in learning more about the toxicity of various products or drugs.

because of the enormous work burden it would create for small manufacturers to sort out which of their trade secret claims are actually valid and which are not.[635]

To reduce this problem, "[a]gencies should review their laws, regulations, policies, and practices to ensure that CBI and other proprietary claims are not being used to protect information that need not be confidential. . . . Agencies have a responsibility to inform all stake-holders of the methods and manner they employ to determine what material is granted CBI status, and how it is reviewed and analyzed"[636] in as clear and publicly understandable methods as possible.

> **"Confidential Business Information (CBI) claims can . . . make it difficult for the interested public to evaluate studies that contribute to regulatory policy."[637] Agencies that provide CBI protections for studies or data that inform regulation should ensure that the CBI claims are justified. Given the strong incentives to regulated parties for overclaiming CBI protection and the resultant costs from this overclaiming to public health protection and research, it is important that the agencies' CBI programs not provide a safe haven for unjustified suppression of relevant regulatory research.[638] To that end and as a first step, the agencies should review their CBI programs to ensure that there is rigorous oversight of CBI and related trade secret claims on health and environmental research. Agencies should, where possible, penalize those CBI claims that, upon review, appear unjustified.**

D. Future Questions for the Study of Regulatory Science

There are many issues regarding the agencies' use of science that will benefit from further research. Some of the issues that emerged from this study that would benefit significantly from further study and attention are described below:

The role of advisory groups and external peer reviewers

For some regulatory projects, Congress requires the agencies to empanel a science advisory board to review their work.[639] In a far larger number of regulatory projects, the agencies themselves determine that some form of expert peer review will be helpful, and

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[635] *See, e.g.,* Warren E. Stickle, president, Chemical Producers and Distributors Association, & Bill Balek, president, International Sanitary Supply Association, letter to EPA, www.cpda.com/TeamPublish/uploads/ CPDAISSA Comments.pdf. [Note; This letter has apparently been removed from the Internet and was not located on Regulations.gov. To access the letter, one may need to file a FOIA request with EPA].
[636] Keystone Center Report, *supra* note 499, at 21.
[637] Bipartisan Policy Center Report, *supra* note *2,* at 43.
[638] *Id.*
[639] *See* Sections III.A.1.a. and 3., *supra.*

they decide the form that peer review should take. In cases where agencies elect to use some form of external peer review, however, their decision-making processes are often unexplained. It is not clear, for example, when or why an agency decides that it should utilize external peer review. For instance, EPA and the FWS use external peer review for IRIS and listing decisions respectively, but EPA does not use external peer review for pesticide registration reviews. It is also not clear whether agencies always have the ability to empanel FACA panels in settings when those panels might be their preferred process for engaging external expert peer review, as compared with individual expert reviewers.[640]

Regardless of the analysis undergirding these choices, once the agency settles on the need for external peer review (or is required to use this expert review), the first and major challenge faced by the agency is the development of a credible process for selecting reviewers.[641] Determining when scientists have conflicts that exclude them from serving as an expert advisor is the most visible and perhaps the most difficult decision that an agency faces.[642] Yet there are also challenges associated with ensuring that the agency has the proper disciplinary mix of experts and that these experts are not skewed in favor of an interested party or otherwise cherry picked by the agency to support its decision. Existing federal guidance on these various challenges in assembling panels, particularly under FACA, is slim.[643]

There are other challenges as well. For example, in regulatory areas that are highly specialized, the pool of experts may not be as large as the requisite size of the expert panel need to conduct the review.[644] Agency programs also appear to vary in the point(s) in the process they decide to use expert review[645] and in how these advisors will be used, such as: commenting on agency products (e.g., EPA's IRIS)[646] versus actually advising the agency in a more iterative way as a collaborator (e.g., EPA's CASAC in the NAAQS)[647] versus actually suggesting projects and priorities (e.g., NRC's ACRS)).[648] There also appear to be significant differences in the amount of work expected of these

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[640] *See* Section IV.A.3., *supra*.
[641] For statutorily created advisory bodies, Congress may place additional constraints on the agencies' selection process. See Sections III.A.1.a. and 3., *supra* (discussing these features in the creation of CASAC and NRC Advisory boards).
[642] *See* Bipartisan Policy Report, *supra* note 2, at chapter 2 (devoting much of its coverage of science advisory boards to these conflict challenges).
[643] *See, e.g.*, GAO, Federal Advisory Committees, Additional Guidance Could Help Agencies Better Ensure Independence and Balance (April 2004).
[644] Interview with EPA Staff, Office of General Counsel, Jan. 13, 2012.
[645] Compare CASAC w/ NRC's ACRS, for example. See Sections III.A.1.a. and 3., *supra*.
[646] *See* Section III.A.1.c., *supra*.
[647] *See* Section III.A.1.a., *supra*.
[648] *See* Section III.A.3., *supra*.

advisors,[649] as well as the duration of the advisory committees, which range from standing committees to one-shot reviews.[650]

It is clear that there is no "one size fits all" to engaging external expert reviewers in the oversight of agency regulations, yet the reasons for much of this variation remain unclear. A study exploring these sources of variation would provide a solid foundation for a second study that then considers the ideal roles that advisory boards might offer to science-based regulation and how agencies might use external peer review more effectively. This topic is extremely important and should be considered high priority for further research.

Challenges to evaluating the reliability of data and studies submitted by applicants, particularly studies that are non-transparent (e.g., unpublished and/or publicly inaccessible)

A recurring theme in the study of the different agency programs, as well as in more general interviews, was a concern about how to ensure the reliability of scientific data and studies that are not published and/or publicly accessible. Coincidentally, much of this scientific information is submitted by applicants or regulated parties that generally have vested interests in the outcome of the research. In the case of pesticides, for example, FIFRA requires a member of the public to obtain Section 10(g) clearance before he/she can view the data or research submitted by pesticide manufacturers in support of their pesticide registration.[651] While a member of the public can typically gain this 10(g) access, it requires effort and is generally available only after a pesticide registration decision has been made.[652] Since the research and data submitted by pesticide manufacturers often comprise the majority of the studies available on a particular chemical, and since those studies can sometimes number in the hundreds for a single pesticide,[653] these barriers to public access to the underlying research that informs pesticide decisions are not a trivial problem.

Analogous problems arise in other agency programs. In natural resources law, for example, FWS consultations under section 7 of the ESA are required when an endangered species may be adversely affected by a federal action.[654] Yet the research that the FWS uses to make a determination of whether the federal project will put the species in jeopardy is a biological assessment conducted by the federal agency seeking to

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[649] See *id* (identifying the commitment required of scientists to serve on advisory boards for NRC).
[650] Compare IRIS's use of expert peer reviewers with the role of CASAC in the NAAQS process. *See* Sections III.A.1.a. and c., *supra*.
[651] 7 U.S.C. § 136h(g)(1).
[652] *See* Section III.A.1.b., *supra*.
[653] Interview with FWS Staff, Endangered Species Program, Jan. 26, 2012. This could be empirically verified by counting the number of studies in the data tables for each pesticide listed in EPA's risk assessments, but it was beyond the scope of this study.
[654] 16 U.S.C. § 1536(a).

undertake the project.[655] Stakeholders and the FWS concede that the quality and comprehensiveness of these assessments are not always up to the FWS's standards.[656] Beyond the inherent conflicts involved in preparing the assessment, the applicant agency may not consider the assessments a high priority and may allocate resources accordingly.[657] Many of these preliminary assessments are not subject to notice and comment, moreover, and the public may be only dimly aware that the processes are occurring, much less have the ability and knowledge to request these documents in order to review them.[658]

Similarly, in the re-licensing of nuclear reactors, the NRC staff has been criticized for not verifying technical statements and assessments contained in an operator's application.[659] The NRC's OIG found that this verification work could have made a material difference in the safety evaluations of applications, at least in some cases.[660] Moreover, none of this underlying technical information was available to the NRC personnel located off-site.[661] Stakeholders could also not independently verify whether the applicant-provided information was reliable.

While agencies acting on applicant-submitted information suggest that they review this information carefully,[662] the process remains nontransparent to the extent that outside parties cannot verify the reliability of this information independently. In most cases there is also no independent peer review of the information. Stakeholders are concerned that in these cases the agencies' decision-making processes will not provide sufficient supporting information to the public to allow for rigorous review.[663]

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[655] Interview with former staff of Environmental Defense, Jan. 19. 2012; Interview with FWS Staff, Endangered Species Program, Jan. 26, 2012.
[656] Interview with FWS Staff, Endangered Species Program, Jan. 26, 2012.
[657] Similar quality problems can afflict Clean Water Act Section 404 applications that permit developers to place fill material in wetlands (technically to discharge a pollutant into waters of the United States). 33 U.S.C. § 1344. These applications are prepared by the developers, yet they provide much of the information the Corps of Engineers use to determine whether the application should be granted. Similar quality problems can afflict Clean Water Act Section 404 applications that permit developers to place fill material in wetlands (technically to discharge a pollutant into waters of the United States. Interview with staff, PEER, Aug. 5, 2012.
[658] Interview with former staff of Environmental Defense, Jan. 19. 2012. The MMS' assessment of environmental impacts in the North Aleutian Basin was criticized by GAO fr classifying industry data as proprietary in ways that did not allow it to be shared more widely within the agency for purposes of analysis. GAO, Offshore Oil and Gas Development: Additional Guidance Would Help Strengthen the Minerals Management Service's Assessment of Environmental Impacts in the North Aleutian Basin, GAO-10-276, March 2010 (concluding that staff assessments are incomplete and vulnerable in part because of the lack of clear guidelines for preparing NEPA-required assessments of oil and gas development).
[659] *See* Section III.A.3., *supra*.
[660] *Id.*
[661] *Id.*
[662] Interview with EPA Staff, Office of Pesticide Programs, Jan. 27, 2012.
[663] Interview with staff, PEER, Aug. 5, 2012; Interview with former Environmental Defense employee, Jan. 19, 2012.

The ability of resource-strapped agencies to provide rigorous and transparent oversight of data submitted by applicants or regulated parties – without the benefit of external review by experts or even stakeholders or other members of the public – deserves further study. Some agency officials suggest that the agency dedicates considerable staff resources to ensuring the rigorous oversight of this incoming information, such as in pesticide registration reviews.[664] Yet the pressure to finalize decisions, even in the licensing context and particularly under statutory deadlines, may impair the ability of the agencies to undertake a number of iterative review steps with applicants in order to ensure that their studies are complete.[665] To the extent that there is no external oversight of these internal assessments of applicant-provided data and research, added procedural protections may be needed.[666]

Expert Elicitation

This study's foray into expert elicitation, thanks to the work of Roland Frye, highlights a developing and largely obscure area of science-policy that may become increasingly important over the next decade.[667] Expert elicitation is an approach that is even more complex than science advisory boards and even less well understood. Moreover, with the exception of Mr. Frye's research, there is little analysis of the existing use of expert elicitation in the agencies. Clearly, this area deserves further study.

Just as with science advisory boards, it is useful to understand the circumstances under which agencies decide to use expert elicitation for regulation. Researchers should also explore the primary challenges associated with the agency's use of expert elicitation, such as selection of the experts; transparency of the deliberations; and the agency's charge to the group.[668] Unlike advisory boards, moreover, there may be benefits to agencies, at least in the beginning of their use of expert elicitation, in employing several expert elicitation panels simultaneously or over time to obtain multiple predictions for the same question, as well as to develop additional mechanisms to help the agency ensure that its processes are credible.

Agency Outreach and Decision-making during the preNPRM stage

This study highlights the efforts of certain agencies to provide transparency for their science-based decisions. These elaborate, iterative processes occur wholly before the proposed rule and notice and comment process. While formal notice and comment is

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[664] Interview with EPA Staff, Office of Pesticide Programs, Jan. 27, 2012.
[665] *Id.*
[666] For example, in situations like trade secret when the public and independent reviewers cannot access underlying studies or data, prophelactic processes – like mandating a classified peer review panel that audits the quality of the information or even periodic replication of the data or studies – seems justified, at least until it can be determined whether the information is of high quality.
[667] *See* Frye Paper at Appendix B
[668] *See id.*

not made superfluous by this extensive front-end work (particularly given the role of OMB review on the proposed and final rules), it seems probable that the 7+ iterative opportunities for public comment and peer review in the NAAQS process have a substantial impact on the content of EPA's draft proposed rule.

To the extent that administrative process remains focused on the notice and comment process as the major vehicle for soliciting public and stakeholder input, this study suggests that in at least some areas of science-based regulation, such a focus is missing most of the action. The processes employed by EPA and to some extent the NRC indicate that a great deal of interaction with stakeholders occurs before the proposed rule stage. The differences between agencies in their approach to science-based decision-making during the preNPRM period also raise normative questions about regulatory process. It is possible, for example, that in more complex regulatory projects, additional formal stages of public and scientific input and dialog are needed on the agency's scientific assessments to provide a truly meaningful opportunity for public comment. The transparency afforded by the notice and comment period following a proposed rule, at least in some rulemaking settings, may not be sufficient. Understanding when these additional, preNPRM processes might be necessary for meaningful public review and exploring the form(s) that those processes could take thus deserves further study.

The privileged role of science

A theme that surfaced from a few interviewees[669] and was reinforced by critical commentary,[670] is a concern that the agencies may in some cases be almost too focused on scientific information developed within the natural sciences, and that this type of scientific information becomes "privileged" at the expense of other vital information, including social science research, that should inform the agency's mission. For example, when asked what he thought the biggest problem was with EPA's science, one prominent interviewee stated that it was EPA's failure to take into account social science information, such as behavioral features that affect consumer behavior and hence cut to the core of EPA's mission of protecting public health.[671]

Thus, another area for research is an examination of whether the agencies' high standards for oversight, review, and the creation of elaborate scientific databases might

[669] Interview with Academic that was involved with EPA's Science Advisory Board, July 13, 2012; Interview with Staff, Pesticide Research Institute (a public interest organization), Aug. 1, 2011.
[670] *See, e.g.*, WILLIAM ASCHER, TODDI STEELMAN, AND ROBERT HEALY, KNOWLEDGE AND ENVIRONMENTAL POLICY: RE-IMAGINING THE BOUNDARIES OF SCIENCE AND POLITICS (2010) (arguing that science is unduly privileged in environmental law in the U.S. to the exclusion of other relevant and useful information).
[671] Interview with Academic that was involved with EPA's Science Advisory Board, July 13, 2012; *see also* Letter to Lisa Jackson, EPA from Deborah Swackhamer, Chair of EPA, Science Advisory Board, July, 8, 2012, 5-6 (discussing the important but neglected role of the social sciences in EPA's work).

crowd out the development and use of other valuable types of information in certain regulatory settings. This exclusion of or inattention to other types of useful information could be due to an overly narrow framing of the kind of information that is relevant to the decision or an unnecessarily narrow framing of the agency's goal or mission.

Conclusion

A long-standing challenge for regulatory science is to ensure that policy decisions can be assessed and set against the scientific record. Interested observers who are not intimately involved in the rule should be able to trace the use of science into the final regulation and, through this step-by-step explication judge the veracity of the use of science at every turn. This scientific transparency should not be theoretical, either. Six feet of NAAQS criteria documents, standing alone, do not serve as a meaningful backdrop against which to assess the scientific rigor of a final policy decision. Scientific transparency means that agencies have provided an accessible means for sophisticated onlookers to identify discrepancies between the scientific record and the policy decisions being made on that record and to evaluate why those changes were made.

The recommendations advanced here are intended to advance this goal – namely to develop processes that ensure that agencies create scientific records that not only inform decision-making, but can be used to check or judge the quality of those decisions. These recommendations first attempt to remove the external barriers that agencies face in developing more rigorous and transparent processes. A review of five different regulatory programs in three agencies reveals that there are some significant barriers, particularly with respect to the lack of transparency associated with OMB review.

The recommendations also suggest a list of best practices that agencies should consider in developing their decision processes that incorporate science into regulatory policy. These best practices not only identify key steps to ensuring rigor and transparency in the agencies' use of science, but identify innovations employed by other agencies that can be adapted to agency processes without a significant investment of resources or the need to develop new programs or hire more officials.

Finally, the recommendations call upon OSTP to help collect and generate important information on the agencies' use of science. This includes requiring agencies to describe their processes involving the use of science in more detail. OSTP should also create a forum for advertising agency innovations that can serve as best practices across government.

Regulatory science has been in the dark long enough. President Obama's integrity initiative provides the impetus not only for encouraging regulatory agencies to develop their own, improved integrity policies, but also for spurring oversight agencies

like OSTP to seize the opportunity to collect critical information on agency processes that can be used more broadly to share successes and enlist outsiders in developing new and improved regulatory policies.

Message

From: Ward, Hillary [Ward.Hillary@epa.gov]
Sent: 4/15/2019 8:13:06 PM
To: OAR Briefings [OAR_Briefings@epa.gov]
CC: Koerber, Mike [Koerber.Mike@epa.gov]; McKinney, Voronina [mckinney.voronina@epa.gov]
Subject: Materials: 4/16 OAR to OAQPS
Attachments: Agenda OAR Visit to RTP April 2019Final.docx

Please see the attached agenda and materials for OAR's visit to RTP on 4/16.

Regards,

Hillary Ward
USEPA, Office of Air Quality Planning and Standards
(919)541-3154

Message

From: Dominguez, Alexander [dominguez.alexander@epa.gov]
Sent: 2/26/2019 2:46:55 PM
To: Woods, Clint [woods.clint@epa.gov]
Subject: FW: Materials: OAR Visit to RTP
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Sent: Tuesday, February 26, 2019 9:46 AM
To: OAR Briefings <OAR_Briefings@epa.gov>
Cc: McKinney, Voronina <mckinney.voronina@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: Materials: OAR Visit to RTP

Hello,

The attached agenda has been updated with materials for pdf versions of the morning briefings (for printing). All meetings will after 10AM will now occur in C401A.

Thanks,
Hillary Ward